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**Child labour in affluent societies: law's influence  
on attitudes and practices**

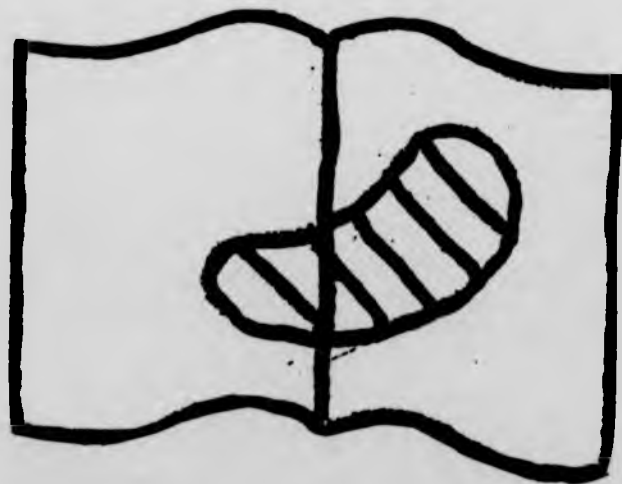
**Wiebina Helena Heesterman-van der Maën**

A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of  
Philosophy of Law (PhD)

University of Warwick, September 2004

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## **Acknowledgements**

I want to thank many people, who helped and supported me during the last five years: first of all my supervisor for the last year of thesis writing, Professor Judith Masson, whose criticisms and suggestions have been invaluable.

I also thank Professor Mike McConville, my supervisor for two years, who encouraged me to undertake, what I really wanted to do in the first place. Also all those, who helped me by consulting information sources, not available in this country, and those, who offered to distribute questionnaires, namely:

Officials from the labour inspectorates in three countries: Mr D. Korver, Mr. A. Perlof, and Ms Wever, two librarians: Ms. Lilian Chow of the Witkin State Law Library of California, Mr A. Dekker of the Library of the Van Vollenhoven Instituut, and also Ms Yolanda Leslie of Fundacion Respeta Mi.

Then I thank Ms Marieke Arthur, Ms Adriana Betti, Ms Carla den Brinker, Mr Chris Brown, Ms Elvisa Ceauscevic, Ms Christine Hoytink, Ms Carol Hughes, Mr Narcis Imamovic, Mr Cees Kleijbergen, Ms Anneke van der Maën, Mr C. Mehmet, and Ms Fiona Verde. Last, but not least, I thank Aart, who helped me both in the public and the private sphere.

Wiebina H. Heesterman-van der Maën

### **Declaration**

The materials used in this thesis are my own work. All sources used have been acknowledged. The thesis has not been submitted for a degree at any university. A paper, 'Children's Work and Children's Rights, Policy Issues in three Affluent Societies', has been accepted for publication as part of the Conference Proceedings of the Politics of Childhood Conference, held on 10-11 September 2002, at the Centre for the Social Study of Childhood, University of Hull. The paper is loosely based on Chapter 7 of the thesis, although concerned with the United Kingdom instead of the Island of Aruba.

## Synopsis

The thesis traces the influence of law on the institutional practices and attitudes concerned with child labour, using a comparative approach. It has been suggested, that the adoption of International Instruments relating to children and young people, in particular the *Convention on the Rights of the Child*, will be able to change attitudes towards children. Views of children and childhood have both influenced laws, framed with a view of protection, and have been influenced by them.

This interdependent relationship is explored in three affluent States. Affluent societies have been selected rather than countries in transition, as developments in the regulation of child work are less likely to be determined by poverty and expediency than by the regard for the interests of young people. The three States are California, one of the States of the United States, the Netherlands, and the Island of Aruba, a semi-independent State within the Kingdom of the Netherlands. The States selected occupy different positions within the international legal framework. The United States has so far not ratified the *Convention on the Rights of the Child* or other Conventions related to children, the Netherlands has ratified most children's rights Instruments, whilst Aruba only recently accepted the *Convention on the Rights of the Child*.

In order to be able to cover the various activities by young people, which can be regarded as 'work', use is made of a comprehensive definition of the concept of 'child labour'. This definition not only covers traditional children's jobs, but also juvenile prostitution, one of the 'worst forms of child labour', targeted by ILO Convention 182. Views of work construct children as different from adult workers. Some work, considered suitable for children, is considered important for its educational value only. Other activities are thought to lead to the loss of childhood of the young people involved, who need to be both protected as helpless victims and kept under control.

According to the philosopher Habermas, the legitimacy of law depends on the extent, to which equal consideration is given to the interests of all involved individuals. This is possible, if a system of legal norms is built on a process of discourse, in which participants are able to regard each other as equals. The discourse principle allows the addressees of law to be involved at the same time in its formulation, thereby satisfying both the private and public autonomy of participants. The attitude of children to labour controls on their work is explored in the light of the discourse principle.

Recent developments in the field of children's rights have led to changes in the perception of children from mere objects of concern into social actors. Such developments have been promoted by the adoption of the *Convention on the Rights of the Child*, which constructs young people both as rights subjects and individuals entitled to care and protection, regardless of inequalities of gender, class or ethnicity. The thesis explores the rationale for the recent changes in legislation concerned with the work of children and young people with the purpose of examining, whether the views of young people are taken into account. An important question is to what extent attempts are made to balance existing patterns of thought with new modes of thinking, promoted by International Instruments, such as the *Convention on the Rights of the Child*. As the views of people involved, are of crucial importance, use is made of a fieldwork study of the views of young people and of adults, administered in California and the Netherlands. Also a number of respondents working with children and young people in various capacities, were interviewed in the three States in the comparison.

According to the analysis of the developments in the three States in the comparison, the process, by which the child labour legislation has been conceived in the Netherlands, corresponds most closely to the ideal of law, in which the addressees of law also engage in its framing.

## International Legal Instruments

- ILO (1919) *Minimum Age (Industry) Convention* C05, adopted 28 November 1919
- ILO (1921) *Minimum Age (Agriculture) Convention*, C10, adopted, coming into force 13 June 1921
- League of Nations (1924) *Declaration of the Rights of the Child* (Declaration of Geneva)
- League of Nations (1926) *Slavery Convention* (1926), adopted 25 September 1926, into force 9 March 1927, amended by *Protocol, UN Resolution 794(VII)*, adopted 7 December 1953, into force 7 July 1955
- ILO (1930) *Forced Labour Convention*, C29, adopted 28 June 1930, coming into force 1 May 1932
- ILO (1936) *Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea* (revised) C58, 24 October 1936, coming into force 11 April 1939
- ILO (1937) *Minimum Age (Industry) Convention Revised*, C59, adopted 22 June 1937, coming into force 21 February 1941
- United Nations *Charter of the United Nations*, signed at San Francisco on 26 June 1945, entry into force 24 October 1945, in accordance with Article 110 (1945). Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, into force on 12 June 1968
- ILO (1947) *Labour Inspection Convention*, C81, into force 07-04-1950, adopted 11 July 1947, into force 7 April 1950
- United Nations (1947) *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1947). Approved by General Assembly resolution 317(IV) of 2 December 1949, entry into force 25 July 1951
- United Nations *Universal Declaration of Human Rights* (1948). General Assembly resolution 217 A (III) of 10 December 1948, (UDHR)
- United Nations *Declaration of the Rights of the Child* (1948).
- Council of Europe (1950) *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) EtS. 5, as amended by Protocol No. 11. Rome, 4.XI.1950
- United Nations (1956) *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*
- ILO (1957) *Convention concerning the Abolition of Forced Labour*, C105 Into force: 17-01-1959, adopted June 1957, into force 17 January 1959
- United Nations (1959) *Declaration on the Rights of the Child*, (1959). General Assembly resolution 1386(XIV) of 20 November 1959
- Council of Europe (1961) *European Social Charter*. Ets 035, adopted 18/10/1961, in force 26/02/1965, (revised) Strasbourg, 3.V.1996, ETS 163
- ILO (1965) *Minimum Age (Underground) Convention*, C123, adopted 22 June 1965, into force 10 November 1967
- ILO (1965) *Minimum Age (Underground) Recommendation*, R124, adopted 22 June 1965

- United Nations (1966) *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49
- United Nations (1966) *International Covenant on Economic, Social and Cultural Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27
- United Nations *Vienna Convention of the Law on Treaties* (1969), in force 27 January 1980, Amendment adopted by General Assembly Resolution 1991 (XVIII)
- ILO (1973) *Convention concerning Minimum Age for Admission to Employment (Minimum Age Convention)*, C138, adopted 26 June 1973, into force 19 June 1976
- ILO (1973) *Recommendation concerning Minimum Age for Admission to Employment (Minimum Age Recommendation)*, R146, adopted 26 June 1973
- United Nations (1976) *Optional Protocol to the International Covenant on Civil and Political Rights*. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 9
- United Nations *Convention on the Elimination of All Forms of Discrimination against Women* (1979). Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with article 27(1)
- United Nations (1989) *Convention on the Rights of the Child, CRC/C/61/Add.4*, 4 October 2001; Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49
- Organization of African Unity (1990) *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49
- ILO (1996) *Convention concerning Home Work (Homework Convention)*, C177, adopted 20 June 1996, into force 22-04-2000
- Council of Europe, *European Convention on the Exercise of Children's Rights*, ETS 160, adopted 25 January 1996
- United Nations (1999) *Optional Protocol to the Convention on the Elimination of Discrimination against Women*, Adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, Human Rights Day, entry into force 22 December 2000
- ILO (1999) *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention)*, C182, adopted 17 June 1999, into force 19 November 2000
- ILO (1999) *Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour*, R190, adopted 17 June 1999
- ILO (1999)

United Nations (2000) *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 12 February 2002

United Nations (2000) *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, enters into force on 18 January 2002

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*Global and Regional Commitments; from Stockholm to Yokohama: the Global Partnership to combat CSEC* (2001)

2nd World Congress against the Commercial Sexual Exploitation of Children (2001).  
*Yokohama Global Commitment*.

World Congress Against Commercial Sexual Exploitation of Children (1996). *Declaration and Agenda for Action*. Stockholm. <http://www.globalmarch.org/virtuallibrary/dci/world->

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European Council, *Directive 89/552/EEC* of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television without Frontiers)

European Council, *Directive 89/391/EEC* (1989). On the introduction of measures to encourage improvements in the safety and health of workers at work, O.J. L183, 12 June 1989

European Parliament, (1987) *Resolution on child labour*, 1987

European Parliament, (1992). 'Proposal for a Directive COM(91)0543 - C3-0126/92-Syn 383.' OJ, L 7/12/1992.

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<http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC9188.htm>

Council of Ministers, (1994). *Young Workers' Directive 94/33/EC*, L216, August 20, 1994.

European Council, (1994) 'Directive 94/33/EC of 22 June 1994 on the protection of young people at work.' *Official Journal of the European Communities* L 348 vol. 37, December 31, 1994

European Commission, (1998). *Communication of the Commission on Undeclared Work* (COM(98) 219 of 7.4.1998). Brussels, European Commission.  
[http://europa.eu.int/comm/employment\\_social/empl\\_esf/docs/com98-219\\_en.pdf](http://europa.eu.int/comm/employment_social/empl_esf/docs/com98-219_en.pdf)

European Council, (2000). *Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation*, L 303/16, OJ L 303/16. Strassbourg, European Union.

European Council, Decision (2001/822/EC) on the association of the European Community with the Overseas Countries and Territories.' (2001). Official Journal L 314, 30/11/2001, pp. 0001-0077

## **Statutes**

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*Wetboek van Strafvordering voor de Kolonie Curaçao*, K.B. 1868, no 4, amended 1922, 1936, 1961, Titel VI, Overtredingen betreffende de zeden

*Verordening tot uitbreiding van de bevoegdheden van justitie en politie in verband met de bestrijding der zedeloosheid*, P.B. 1922, no 68

*Arbeidsregeling* 1952 (Work Regulation Ordinance) P.B. 1952, no 39

*Statuut voor het Koninkrijk der Nederlanden*, P.B. 1954, no 121

### **Aruba**

*Landsverordening* 1932, houdende bepalingen tot verbod van arbeid beneden de leeftijd van 13 jaar, P.B. 1939, no 138

*Besmettelijke ziekteverordening* 1951, P.B. 1921, no 66

*Eilandsverordening* 1952, P.B. 1952, no 4

*Minimum Loon Verordening*, P.B. 1972, no 110

*Wetboek van Strafrecht van Aruba*, Title XIV, Misdrijven tegen de Zeden, AB 1991 no GT.50 (1991).

*Veiligheidsverordening* 1986, AB 1986.

*Veiligheidsverordening* 1991, AB 1991, GT 22.

*Landsverordening besmettelijke ziekten*, AB 1992 GT 11

*Algemene Politieverordening*. AB 1995, no GT 8

*Burgerlijk Wetboek*, AB 2001, no 89

*Landsverordening van 15 augustus 2003 tot wijziging van het Wetboek van Strafrecht van Aruba* (AB 1991 no. GT 50) (aanpassing zedendelicten en strafbaarstelling belaging), Afkondigingsblad Aruba 2003, no 47.

### **California**

*Business and Professions Code*. BPC

*Code of California Regulations*, CCR

*Education Code*, EC

*Family Code*, FC

*Constitution of the State of California* 1849

*Constitution of the State of California* 1879, Stats.1988, c. 1094, last amended November 5, 1996

*Act for the Government and Protection of Indians*, enacted April 22, 1850 as c. 13 , amended as c. 231 in 1860

*Act concerning Civil Cases*, 1851, Ch. 5 (1851). (amended 1854)

*Apprentice Law* 1858 (1858). Ch. 182

Stats. 1868, Ch. 329 (1868).



*Penal Code of California*, Title IX, Chapter 1 (1872). amended 1897, c. 139, 1913, c. 122, 1976, Ch. 126, 2001

*Labor Code* 1988, Ch. 7, amended 1901 by c. 205, in 1905 by c. 118, Labor Code, Chapter 6, Subchapter 1. (1986). Amendment files 3-4-86, Act to add Section 1308.8 to the Labor Code (1998). AB 744, Ch. 239, s 1

*Omnibus Child Labor Reform Act* (1993). AB 1900

*Education Code* (1995). Ch. 3, amended by Act to amend Section 49116 of the Education Code and Sections 1286, 1288, 1294.1, 1294.3, 1294.4, 1305, 1308, 308.3, 1309.6, 1391, and 1393 of the Labor Code (1995). AB 443

*Employment of Minors; Film Industry* (1998). SB-1162

### **England and Wales**

*Contagious Diseases Act* (1866 to 1869). 29 & 30 Vict. c 35; 31 & 32 Vict. c 8032 & 33 Vict. c 96

*Children and Young Persons Act* 1933. c. 12.

*Street Offences Act*, 1959 c. 57

*Health and Safety at Work Act*, c..37 (1974).

*The Workplace (Health, Safety and Welfare) Regulations* 1992, SI 1992 No.3004

*Children (Protection at Work) Regulations* 1998 (S.I. 1998/276).

*Children (Protection at Work) Regulations* 2000 (S.I. 2000/1333).

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*Burgerlijk Wetboek*, Stb. 1969/257, last amended by Stb. 2001/11.

*Armenwet* (Poorlaw) (1854, 1912). Stb. 1854/100, Superseded by the *Algemene Bijstandswet* Stb. 1963/284.

*Kinderwet*, Stb.1874/130 (Child Act).

*Veiligheidswet* (Safety Act) (1895). Stb. 1895/137.

*Leerplichtwet* (Compulsory Education Law) (1900). Stb. 1900/111, amended by Stb. 1969/303, Stb. 1994/565 and Stb.1997/237

*Wet tot bestrijding der zedeloosheid*, amending the *Wetboek van Strafrecht* (1911). Stb. 1911/130

*Arbeidswet* (Labour Law), Stb. 1919/624 (1919).

*Wet Minimumloon en Minimumvakantiebijslag* (1968). Stb. 1968/657

*Wet op de Economische Delicten* (WED, transl. Economic Offences Act) (1950). Stb. 1950/K258, amended Stb. 1999/194

*Koninkrijk Statuut* (Kingdom Charter), Stb. 1954/503, amended 15 December, Stb. 1994/1995, 1, 24 April, Stb. 1995/233 (1954, revised 1986, 1997).

*Arbeidsbesluit Jeugdigen* (Decree on Youth Employment), repealed July 1997 (1973). Stb. 1973/50

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*Arbeidsomstandighedenwet 1998 (Arbowet, Working Conditions Act)*, Stb. 1998/184,  
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*Penal Code* 18 U.S.C. § 2421-2424, amended in 1978 by Public Law No. 95-225, and  
*Violent Crime Control and Law Enforcement Act*, § 2423 Pub.L. 103-322, Sept.  
13, 1994, 108 Stat. 1796

*Federal Civil Rights Act* 1866 (14th Amendment) 42 U.S.C. §1981

*White Slave Traffic Act* 1910, Ch. 395.

*Keating-Owen Act*, 1916

*Child Labor Tax Law*, 1919, Title 12 of *Revenue Act* 24, Ch. 18, 40 Stat. 1138

*Protection of Children Against Sexual Exploitation Act* (1978). United States Codes  
(U.S.C.) §§ 2251, 2253, 2225, Pub.L. 95- 225, Feb. 6, 1978, 92 Stat. 7

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*SCC v Ikhya* [27 July 2001], Woking Magistrates Court (2001).

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*In re Gault*, 387 U.S. 1 (1967)

*Tinker v Des Moines Independent Community School District*, 292 U.S. 503 (1969)

*Bellotti v Baird*, 438 U.S. 132 (1976)

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"For most adults it also appears to be impossible to communicate with children on an equal basis, as if they are afraid of them," de Langen, 1992

## 1. Introduction

### 1.1. Setting the scene

In many parts of the world children work for their own, and sometimes their families' livelihood,<sup>1</sup> instead of attending school. Others spend long hours working in addition to the time spent in school. The fact raises concerns that can be expressed as a human rights issue. Allowing children to spend their time and energy in work, instead of play and learning for the future, tends to be regarded as a violation of their childhood. Although one might like to think so, it does not happen in the Third World only. The hearing of *SCC v Ikhye* [27 July 2001], Woking Magistrates Court is a reminder of that fact. The firm was convicted for the illegal employment of ten young people aged fifteen and sixteen between the twenty-fourth of May and the fourteenth of June 2001. To give an idea of the serious character of the infringements: one fifteen year old was kept at work from just after 4 p.m. to nearly 2 a.m.

Most people will agree that being kept awake until the early hours of the morning is harmful to young people, is tantamount to exploitation, and that this needs preventing. The term 'exploitation' has been defined as "taking unjust advantage of another for one's own advantage or benefit. It covers situations of manipulation, misuse, abuse, victimization, oppression or ill-treatment."<sup>2</sup> In addition, 'economic exploitation' has been described as "work that exploits the child as a cheap substitute for adult labour, work that uses the child's effort, but does nothing for his development."<sup>3</sup> Any such exploitation of young people is unacceptable. However, throughout the European Union many economic activities are prohibited to children, because of age restrictions rather than

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<sup>1</sup> Nieuwenhuys, O. (1992) 'Het Recht om te werken: het Werk van Kinderen en Rechten van het Kind'. *Tijdschrift voor de Rechten van het Kind*, September 1992, p. 4.

<sup>2</sup> Ms. Marta Santos Pais, Opening Statement, § 1, *General discussion on the economic exploitation of children*, 4<sup>th</sup> session, CRC/C/20, Annex V.

<sup>3</sup> ILO (1983). *ILO Director-General's Report*, Geneva, ILO, p. 37.

that one can speak of exploitation. A remark by an interview respondent, a teacher working with ethnic minority children, himself also from an ethnic minority background, helped to put this fact into context.<sup>4</sup> Referring to an instance of child labour in the Netherlands: "They allowed fifteen-year olds to engage in cash desk work, just as they would at home," which indicates that activities prohibited in one society, may be considered acceptable elsewhere.<sup>5</sup> Yet one might well consider operating a cash register as educational, capable of helping young people to obtain a grasp of financial matters. The prohibition can be justified by the argument, that handling money is too much of a responsibility for fifteen-year olds, or that it might put them at risk from unscrupulous adults. However, when this takes place in the daytime, with a responsible adult on the premises, there seem to be no intrinsic reason to prohibit such work to fifteen year olds, provided such work takes place on an occasional basis. Yet according to the 1995 Dutch *Arbeidstijdenwet* (*Working Times Act*) the 'employment of fifteen-year olds as cashiers' is too great a burden.<sup>6</sup>

Law concerned with children and young people, whether regulating the behaviour of adults towards children or of children themselves, cannot do otherwise than affect their position in society. One may assume that the intention of the lawmakers aimed at improving situations considered less than ideal. The main question to ask, is whether all children, i.e. all persons under eighteen, capable of working, playing and being taught, are demonstrably happier and more fulfilled due to the practices and processes associated with the large body of rules and regulations, that impact on attitudes and practices relating to children and work. Whether this is the

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<sup>4</sup> NL-Q.

<sup>5</sup> Jobs permitted to fourteen and fifteen year olds in the U.S. include work at a cash register, e.g. according to the California Labor Code 1294.3(b): "Minors 14 and 15 years of age may be employed in occupations not otherwise prohibited by this chapter, including, but not limited to, the following: (b) Cashiering, selling, modelling [...], provided this is in accordance with the hours restrictions in Labor Code 1290 and/or Education Code, Part 27, i.e. part-time.

<sup>6</sup> Winkelhuis, S. A. (2001). *Arbeid door Jongeren*. s'Gravenhage, Arbeidsinspectie, Report section 'Dangerous work,' p. 40, despite a relaxation of the prohibition, 1999, see Chapter 7, Section 7.4.1.2. *Enforcement, the Netherlands*.

case within the societies considered in the present research, can only be discovered by looking at the reality of children's lives, by asking what their priorities are, and listening to children and young people, as well as adults interacting with them.

## 1.2. Attitudes and practices in three affluent societies

Despite the decision in the court case mentioned earlier, child labour violations are seldom taken seriously. Many people assume that child labour has been abolished in industrial countries, as very few violating employers are taken to court. Even where this is the case, the language is unambiguous,<sup>7</sup> a fine is levied, and the case is concluded in the expectation, that the employer will refrain from reoffending. The fact that the Ikhya case was based on a breach of a local bye-law, based on a 1933 Act,<sup>8</sup> amended in the late 1990s because of the country's obligation to harmonise its provisions with EU Directive 94/33/EC, suggests that child labour concerns do not have a high priority in the U.K.

Yet several International Conventions important to the issue have been adopted during the course of the last century, such as the *ILO Convention concerning Minimum Age for Admission to Employment (Minimum Age Convention)* 1973 and the *Convention on the Rights of the Child (CRC)* 1989, which establishes protection from economic exploitation as a right owed to children.<sup>9</sup> In addition, several States have amended existing child labour legislation since the adoption of these Instruments. One may ask to what extent such laws show the impact of the rights-based thinking of the

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<sup>7</sup> "That you on the 25<sup>th</sup> of May 2001 in the County of Surrey employed XXXX, a child of compulsory school age as a counter assistant between 4.16pm and 1.51am [...] whereas the lawful maximum is two hours, Court Extract, listed at Woking Magistrates Court on 27 July 2001.

<sup>8</sup> *The Children and Young Persons Act*, amended by 'Children (Protection at Work) Regulations 1998 (S.I. 1998/276); Children (Protection at Work) Regulations 2000 (S.I. 2000/1333), Regulation. Section 18: '(1) Subject to the provisions of this section and of any byelaws regulations made thereunder no child shall be employed, (a) so long as he is aged thirteen years, or (aa) to do any work other than light work. (d) for more than two hours on any day on which he is required to attend school'.

<sup>9</sup> Art.32: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with



CRC as well as the welfarist assumptions that have long dominated the attitudes towards the economic activities of children.

It is intended to examine and compare the influence of law on the attitudes and practices towards the economic activities of children and young people in three affluent<sup>10</sup> 'States'.<sup>11</sup> Two of these have adopted child labour legislation in the early 1990s, namely California, one of the U.S. States, and the Netherlands, whilst the third, Aruba, is one of the more prosperous 'States' in the Third World. It is also a Member State of the Kingdom of the Netherlands,<sup>12</sup> oriented in many aspects as much to the U.S. as to the Netherlands, because of its dependence on tourism and financial support from both countries. As explained in Chapter 5, which approaches the child labour issue from a viewpoint of rights, the three 'States' occupy very different positions in the international human rights regime that has developed since the Second World War. In consequence they are subject to varying levels of supra-national and supra-state law, reflected in different attitudes. The reasons, why these particular 'States' have been selected are set out in Chapter 3, Section 4.

### 1.3. Terms of reference: child and work/labour

There are a bewildering number of definitions of child work and/or child labour in connection with 'economic activities by children'. To begin with, the use of the words

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the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

<sup>10</sup> Defined as having a Gross National Income (GNI) of over \$22,000, per person. <http://www.worldbank.org/> This was \$34,260 for the U.S., \$24,970 for the Netherlands, <http://www.worldbank.org/data/databytopic/GNPPC.pdf> and \$22,000 for Aruba, calculated from its GDP, <http://www.imf.org/80/external/pubs/ft/scr/2001/cr01158.pdf>.

<sup>11</sup> The word 'State' is used throughout the thesis in quotes, when referring to the three geographical entities being compared, because of the lack of a term covering the political constitution all three. Strictly speaking only the Kingdom of the Netherlands is a State (a sovereign political power or community). Both the 'Netherlands in Europe' and the Island of Aruba are coequal Partners within the Kingdom, whilst California is a State in the sense of 'one of a number of areas or communities having their own governments and forming a federation under a sovereign government'. (definitions of the term 'state' in Collins English Dictionary and Thesaurus). Although accession to International Conventions ought to be interpreted as 'a matter for the Kingdom' (see Appendix 6), the Aruba Government has delayed the decision to accede to the CRC by omitting to make any domestic preparations required for accession.

'child' and 'children' suggests that a child is a known entity, and that 'children' constitute a uniform category. Instead the term 'children' may refer to near-adults as well as infants, with widely divergent needs and aspirations. Because the use of the term 'child' for a human being between birth and age eighteen, adopted by the *CRC*,<sup>12</sup> feels inappropriate in relation to sixteen and seventeen year olds, the expression 'children and young people' is used instead.

Although in the West one tends to make distinctions in terms of school-age, e.g. children being 'below compulsory school age', and young people 'over compulsory school-age', such divisions are culture-bound. Although the *ILO Minimum Age Convention 1973* refers in Art. 2(3) to 'compulsory schooling', in many parts of the world education has not yet been established as compulsory, whilst children of different ages may start their schooling together.<sup>14</sup> For the present study the division is not meaningful either as California operates compulsory schooling until age eighteen, the Netherlands has part-compulsory schooling until the end of the year in which a young person celebrates her seventeenth birthday, whilst education is not compulsory in Aruba.

The uniformity implied by the terms 'child' and 'children' is further cast into doubt, when one takes account of the ethnic and racial composition of the different populations, which has led to a complex interplay of racial, ethnic, class and gender inequalities. The processes that led to these inequalities, which preclude a view of the child as a simple undifferentiated object of labour regulation, are discussed in Chapter 6, which covers the development of the regulation of child work.

Similarly, the words 'work' and 'labour', tend to be used very loosely, when used in connection with children and young people. The distinction between the two terms has been defined in different ways. For instance, Fyfe regards 'child work' as 'light

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<sup>12</sup> The Kingdom of the Netherlands is a quasi-federal structure, comprising the Netherlands in Europe, the Island of Aruba, and the Antilles Islands, see Appendix 6.

<sup>13</sup> Art. 1.

work that does not detract from the other essential activities for children, leisure, play and education', and 'child labour' as work that impairs the health and development of children.<sup>15</sup> The difference between the two concepts has also been explained in terms of public and private, for instance in a country such as Bangladesh. 'Labour', a remunerated, public activity, is what male children engage in, whilst 'work' is unpaid, and takes place within the private, female sphere of the home.<sup>16</sup> European Directive 94/33/EC appears to equate work and employment, setting a 'minimum age for access to 'work' or 'employment',<sup>17</sup> whilst also referring to 'this Resolution on child labour'<sup>18</sup> without defining its nature. In consequence it proves near impossible to define what should be regarded as 'child labour'. For instance, the definition 'paid work performed by children' overlooks caring and household activities for relatives. Yet, it is well known that children engage in many activities on behalf of other people for minimal pay, remuneration in kind, or even no pay at all.<sup>19</sup> Other demanding activities, such as participation in beauty contests or competitive sports, tend not to be regarded as work, but as leisure activities. The proposition that sports ought to be regulated as a type of work,<sup>20</sup> has been met with scepticism, because of the view that physical exercise promotes strength of character.<sup>21</sup> Yet it falls under the terms of a definition of child labour as framed by the ILO,<sup>22</sup> and has, like participation in the entertainment sector,

<sup>14</sup> See, e.g. Ennew, J. (1993), 'Maids of all work'. *New Internationalist*, 1993, pp. 11-13.

<sup>15</sup> Fyfe, A. (1989). *Child labour*. Oxford, Polity Press, p. 4.

<sup>16</sup> Khair, S. (2000). Child Labour Reconsidered: the Employment of the Girl Child in the Bangladesh Garment Industry. *Gender, law and social justice: International perspectives*. A. Stewart. London, Blackstone, p. 122, see also Nieuwenhuys, O. 'Het Recht om te werken: het Werk van Kinderen en Rechten van het Kind'. *Tijdschrift voor de Rechten van het Kind*, p. 4.

<sup>17</sup> Preamble.

<sup>18</sup> Preamble, referring to Resolution published in OJ No L 196, 26/07/1990, p. 1.

<sup>19</sup> Brannen, J. (1995). "Young People and Their Contribution to Household Work." *Sociology* 29(2): 317-338; Morrow, V. (1996). "Rethinking Childhood Dependency: Children's Contribution to the Domestic Economy." *The Sociological Review*: pp. 58-77.

<sup>20</sup> Donnelly, P. (1997). "Applying child labour laws to sport." *International Review for the Sociology of Sport*, pp. 393-395.

<sup>21</sup> Donnelly, P. (1997). "Applying child labour laws to sport." *International Review for the Sociology of Sport*, p. 396.

<sup>22</sup> 'Being exploited, or over worked, or deprived of their rights to health and education, or just deprived of childhood', *World Labour Report*, 1992, p 14.

been recognised as an area requiring special attention in EU Directive 94/33/EC.<sup>23</sup> Another type of work, which defies regulation, is industrial homework, although it falls under the terms of the ILO *Minimum Age Convention* 1973 as reaffirmed by the ILO *Home Work Convention* 1996.<sup>24</sup> Such work is virtually uncontrollable, particularly, where it is subcontracted by an adult member of the young person's family.

Also, the same activities may not be defined in the same way in different jurisdictions. To give an example, a person engaged in newspaper delivery is defined as an independent contractor in the U.S. *Fair Labor Standards Act* 1938 with the implication that child labour provisions are not applicable.

Few publications on child labour issues include prostitution under the heading of 'child work', although teenagers in developed countries may drift into prostitution or even engage actively in it, just as much as in the Third World.<sup>25</sup> Few people have any doubts that prostitution, involving children below the age of consent, defined as "the use of a child in sexual activities for remuneration or any other form of consideration,"<sup>26</sup> constitutes exploitation. However, young people of sixteen and seventeen find themselves in a more ambiguous situation. Although over the age of consent and regarded as individuals capable of exercising a considerable degree of autonomy, they are still classified as 'children' in the International Legal Instruments framed from the adoption of the *CRC* onward.<sup>27</sup> In consequence they too are considered victims, whether or not they have been induced to the practice by other individuals. The

<sup>23</sup> Art. 5(1), 'The employment of children for the purposes of performance in cultural, artistic, sports or advertising activities shall be subject to prior authorization to be given by the competent authority in individual cases'.

<sup>24</sup> Art. 4(g).

<sup>25</sup> 'Sex work' was included in participative research by Woodhead, M. (1999). "Listen to what the children say." *Childhood - a Global Journal of Child Research*, 6(1) p. 31.

<sup>26</sup> *CRC, Optional Protocol on the Sale of Children*, Art. 2(b).

<sup>27</sup> 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. Art 1, *Convention on the Rights of the Child* 1989, also applied to the two *Optional Protocols*; 'For the purposes of this Convention, the term child shall apply to all persons under the age of 18', Art. 2, *ILO Worst Forms of Child Labour Convention* 1999; 'For the purposes of this Charter, a child means every human being below the age of 18 years', *African Charter on the Rights and Welfare of the Child* 1990.

inference that juvenile prostitution is invariably due to coercion has been disputed by a researcher in the area of male juvenile prostitution,<sup>28</sup> arguing, that some young men take pride in a professional attitude towards their 'sex work'.<sup>29</sup> However, the conclusions of the study are misleading as the case studies quoted in the work in question clearly demonstrate the powerful influence of push as well as pull factors, identified in other studies of juvenile prostitution.<sup>30</sup> If prostitution is classified as 'work', as is the case in the Netherlands since its legalisation,<sup>31</sup> it can be regulated, resulting in increased security and health for the persons involved in the practice. As prostitution exposes young people who are still in their development, to unacceptable risks to their physical and mental health, such 'work' can then be declared open to individuals above a certain age only – eighteen or possibly older. Such a policy removes the stigma from being involved as well as the feelings of inadequacy generated by being treated as victims, whilst it still allows the buyers of underage sex to be prosecuted. Therefore it is intended to include the regulation of 'sex work' by young people in the thesis.

However, overtly criminal activities, such as drug running, have been excluded. In order to include these various types of economic activity a variation on a definition of 'child work', framed by the Save the Children Fund will be used for the purpose of the thesis, namely: 'paid work' or 'work that is not paid, i.e. remunerated financially, but for

<sup>28</sup> van der Poel, S. (1991). *In de bisnis: professionele jongensprostitutie in Amsterdam*. Arnhem, Gouda Quint.

<sup>29</sup> Term preferred over prostitution by people involved in the practice according to Melrose, M. (1999). *One way street? Retrospectives on childhood prostitution*. London, The Children's Society, p. 2, see also Bindman, J. (1997). *Redefining prostitution as sex work on the international agenda*. London, Anti-Slavery International.

<sup>30</sup> The concepts of push and pull factors in the field of juvenile prostitution are elucidated further in Chapter 2, Section 2.5.1.3. See Hayes, C. and I. Trafford (1997), 'Issues for Voluntary Sector Detached Work Agencies', in *Child Prostitution in Britain: Dilemmas and Practical Responses*, London, Children's Society, pp. 61-63, and Melrose, M. (1999). *One way street? Retrospectives on childhood prostitution*. London, The Children's Society, pp. 16, 37, 47.

<sup>31</sup> *Wet opheffing algemeen bodesilverbod* 1999, 1999/Stb. 464.

which an adult would get paid',<sup>32</sup> although qualified by the phrase 'an adult, who is not under any obligation to the employer to do the work for free, such as a friend or family member'.

#### 1.4. The regulation of labour of adults and children

Both International Conventions and domestic legislation aiming at the elimination and/or regulation of child labour start from the premise that children are likely to be subject to 'harm' when venturing in the adult world of work, unless they have first undergone a prolonged period of schooling, much of which is irrelevant to their working life. Adults, on the other hand, can demand social justice and fundamental rights at work. In addition to the provision of acceptable working conditions,<sup>33</sup> such rights imply (i) freedom of association and the effective recognition of the right to collective bargaining, and (ii) the elimination of discrimination in respect of employment and occupation.<sup>34</sup> In contrast, the third principle of the ILO Declaration concerns (iii) 'the effective abolition of child labour', which suggests that the other principles are not applicable to children. Although one may assume that 'sufficient lighting' and 'workplace ergonomics' apply to all workplaces, including places where children are employed, child labour provisions do not state so explicitly. Directive 94/33/EC, which is not applicable to working children outside the European Union, is the only binding International Legal Instrument concerned with the work of children and young people containing rules about the working environment.<sup>35</sup> In addition one might ask, whether

<sup>32</sup> Save the Children (1998). Children's perspectives on work. *Children and work in the UK: reassessing the issues*. B. Pettit. London, Child Poverty Action Group, p. 62.

<sup>33</sup> Such as provisions concerned with lighting or workplace ergonomics, for instance Reg. 8, 'lighting' or 11, 'Workstations and seating,' The Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992 No.3004.

<sup>34</sup> International Labour Conference (June 1998). Declaration on Fundamental Principles and Rights at Work. *International Labour Conference, 86th Session: Record of Proceedings*. Geneva, ILO, § 2, principles a. and d.

<sup>35</sup> Preamble, referring to 'minimum requirements to encourage improvements, especially in the working environment'; and Section II, Art. 6 General obligations on employers, e.g. (a) 'Fitting out and layout of the workplace and the workstation'. In contrast the non-binding ILO *Minimum Age Recommendation* 1973 refers in Art. 13(f) to: 'the maintenance of

there are any compelling reasons why children and young people should not benefit from the rights to collective bargaining or the elimination of discrimination in respect of employment and occupation. Instead labour standards relating to children tend to be defined in terms of harm, permits and appropriate working hours. In consequence the adoption of legislation specifically aimed at children serves to accentuate the division between rights considered appropriate for adults and those regarded acceptable for children. Equality in respect of rights should be understood in terms of equality of respect and consideration.<sup>36</sup> The different approaches to the regulation of child labour in the three 'States' are described in Chapter 7.

When examining the legislation in force in the three 'States', one may ask, whether it admits 'an autonomous concept of life' of the subjects whose activities are being regulated. It has been argued that basic rights granted by human rights Conventions, such as the *CRC*, have a 'radiating' effect,<sup>37</sup> capable of revitalising legal solutions, which have not led to the anticipated effects. Social welfare law, in particular, has been charged with the ambiguous effect of guaranteeing freedom, whilst removing opportunities for self-determination.<sup>38</sup> For instance, special labour provisions for women have been blamed for leading to a reduction in the autonomy of female employees rather than their empowerment.<sup>39</sup> If the unequal treatment of women in the sphere of work is a consequence of reducing justice to distributive justice, as posited by Habermas,<sup>40</sup> the same is true for children. This argument allows drawing a parallel between the positions of women and child workers. In consequence it is intended to investigate Habermas's procedural paradigm of law, claimed to have the capacity to generate legitimate law, capable of strengthening the position of

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satisfactory standards of safety and health and appropriate instruction and supervision' only.

<sup>36</sup> This has been expressed most evocatively by a nineteenth century educationalist: "as a kinsman and guest," Slogvolk, P. (1852). 'The Rights of Children', *The Knickerbocker Monthly*, vol. XXXIX(6), p. 488, see Chapter 5, Section 5.2.1.

<sup>37</sup> Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press pp 399, 403.

<sup>38</sup> Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press, p. 416.

<sup>39</sup> Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press, p. 413.

women in the political public sphere.<sup>41</sup> If law created in this way, satisfies both the autonomy and welfare rights of all citizens including women, the question is, whether the proceduralist paradigm is also applicable to children and young people in a similar position. The analogy between Habermas's theory and rights of equality and autonomy as posited in the *CRC*, is further examined in Chapter 3.

### 1.5. The origin of concerns over child labour

A mode of thinking, which constructs children as different from adults, has been set in train from the late eighteenth century: from being 'gainfully employed'<sup>42</sup> working children came to be regarded as objects of pity. Concern over the conditions of work under which many young people were labouring, led first to domestic legislation restricting industrial work by children below a certain age during the course of the nineteenth century. Work by children and young people became an international issue in the early twentieth century, right from the establishment of the International Labour Organisation in 1919 with the adoption of ILO Convention 5, *Fixing the Minimum Age for Admission of Children to Industrial Employment (Minimum Age (Industry) Convention)*, 1919. Ratified by sixty-seven States, the Convention led to the prohibition of work in industrial undertakings by young people below the age of fourteen. From such beginnings the pattern was set for further restrictions - with the age of entry into labour inexorably rising to sixteen and, in some cases, eighteen. In consequence protection from exploitation<sup>43</sup> at the same time spells exclusion from the workplace, loss of the right to earn one's living<sup>44</sup> as well as a change of a position as independent worker into one of a dependent professional learner. However, the adoption of the *Convention on the Rights of the Child* in 1989 redresses the balance by raising the status of children to that of rights subjects and citizens, whilst simultaneously aiming at

<sup>40</sup> Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press, p. 418.

<sup>41</sup> Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press, p. 426.

<sup>42</sup> Zelizer, V. A. (1985). *Pricing the Priceless Child*. New York, Basic Books, p. 56.

<sup>43</sup> E.g. *CRC*, Arts. 32 and 34.



their protection. This reconstruction of children as persons in their own right has been opposed on the ground, that children lack the capacity to make rational choices in support of their future life as an adult, which is regarded as the precondition for the exercise of rights.<sup>45</sup> The view that adults should take decisions concerning the well-being of children in order to safeguard their future has been framed rather convolutedly by Freeman in the form of a question to children as adults-in-the-making, as if they were able to respond in the present.<sup>46</sup> Although referring to children, such a decision is taken from the position of a benevolent third person interpreting the potential wishes of children, which does not do justice to the right of allowing them to 'express their views freely' in the present.<sup>47</sup> The proposition, that adults nevertheless have a duty to protect young people from making choices, likely to result in disastrous consequences, has been argued more consistently in line with the *CRC*, as providing them with equal life-chances by prioritising their 'basic' interests over their developmental and autonomy interests.<sup>48</sup> The controversy over the notion of children as rights subjects on the basis of their humanity is covered in Chapter 4, as a logical progression from the justification of the proposition, that human beings have rights because of their human nature. Chapter 5 relates how the view, that children and young people should not only have the right to be nurtured as dependants, but also to be heard and consulted in the same way as adult human beings, has been given substance in the form of enforceable

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<sup>44</sup> Nieuwenhuys, O. (1992). "Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind." *Tijdschrift voor de Rechten van het Kind*, p. 4.

<sup>45</sup> For instance, Hart, referring to 'adult human beings capable of choice' Hart, H. L. A. (1984). 'Are there any Natural Rights?' *Theories of Rights*. J. Waldron. Oxford, Oxford University Press, pp. 77.

<sup>46</sup> "What sort of action or conduct would we wish, as children, to be shielded against on the assumption that we would want to mature to a rationally autonomous adulthood and be capable of deciding on our own system of ends as free and rational beings?" Freeman, M. D. A. (1992). *The Limits of Children's Rights. The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman. Dordrecht, Martinus Nijhoff Publishers. 23, p. 38.

<sup>47</sup> *CRC*, Art. 12(1).

<sup>48</sup> Eekelaar, J. (1992). The importance of thinking that children have rights. *International Journal of Law and the Family*, 6(1) pp 221 - 235. P. Alston, S. Parker and J. Seymour. Oxford, Oxford University Press, p. 231.

statements. In addition the Chapter discusses the development of the various human rights Instruments pertinent to the subject of the regulation of the work of children.

#### **1.6. Views of child work and the influence of common assumptions**

In order to discover to what extent law is able to change long-held attitudes towards the regulation of the work by children, people should be asked for their views on the subject. As children may well have different priorities from adults, questions to young people are concerned with the motivation of young people to engage in work as well as the type of activity undertaken. Adults have been asked for their views on the impact of the adoption of the *CRC* on the position of children and young people, as well as their views on child work. To that end, use has been made both of questionnaires and interviews. Chapter 3 covers the methodology for the fieldwork for this thesis, including the basis on which the various respondents have been selected, whilst the implications of the responses from the various participants are discussed in Chapter 8.

When inviting the views of respondents from different traditions, one has to be aware of the fact that opinions do not occur in a vacuum. Perceptions may have been coloured not only by historical developments, but also by the way in which different conceptualisations have been internalised. As indicated earlier, expressions relating to the concerns of children and work, such as 'child', 'child labour' and 'harm', tend to be used in a sense that colours people's perceptions, thereby prejudging issues concerned with children and work. However, these considerations do not apply to terms relating to the economic activities of young people only. Even the first paragraphs of this chapter contain a number of expressions, which depend for their effect on associative meaning. For instance, 'learning for the future' not only creates the expectation, that a young person's future life will be in jeopardy without schooling, but also, that learning applies to young people only. Similarly the expression 'violation of their childhood' creates the impression, that childhood is a precious commodity,

which is under attack from vicious adults. Language is full of words and expressions, which have been stretched to convey multiple meanings, liable to give rise to bias. There is a considerable body of literature, concerned with the many conceptions of children and childhood, that led to specific attitudes of adults towards the economic activities of children, discussed in Chapter 2, which gives an overview of the literature serving as a frame of reference for the thesis.

### 1.7. Law and its impact on the lives of children and young people

For the purpose of the research, the complex meaning of word 'Law' as used in the title of the thesis has been the subject of comment by several legal theorists. The ambiguity partly stems from the nature of the English language, which unlike other European languages uses the same term for an abstract concept, a legal system and a particular legal provision.<sup>49</sup> The term 'Law' in the sense of, for instance the German word '*Recht*', denotes an abstract concept concerned with moral values and principles, is not linked to any specific jurisdiction and has connotations of 'justice, fairness, rights and obligation'.<sup>50</sup> With regard to this widest, most abstract sense of the word 'law', the thesis is concerned with principles of behaviour towards children, expressed in international instruments both as rights held by children and responsibilities of States as well of private actors. As the intention is to examine to what extent such principles are being realised in practice, the term 'law' is used in the more concrete sense of

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<sup>49</sup> Allott, A. (1980). *The limits of law*. London, Butterworth, p vii; Algra, N. E. and A. M. Hol, Eds. (1997). *Profiel van het Recht*. Deventer, Kluwer, pp. 1-3.

<sup>50</sup> Hart, H. L. A. (1984). Are there any Natural Rights. *Theories of Rights*. J. Waldron. Oxford, Oxford University Press, p. 79.

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specific legal systems, particular bodies of rules<sup>51</sup> as well as the activities of administrative institutions charged with the implementation of those rules.

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<sup>51</sup> Taking account of laws and regulations adopted by the 31st of July 2003.

## **2. Literature Survey**

### **2.1. Introduction**

The literature of child labour/employment covers a wide field, ranging from news items to reports from governmental and international agencies. In addition to health and safety records, this survey includes academic studies of child development and motivations of children to engage in work. Whilst concepts are explored, such as childhood and work as interpreted in literature concerned with children, the fact that children's work has also been the subject of various types of legal instrument, cannot be ignored. Both International Conventions and domestic legislation tend to include definitions of the regulated activities. Therefore definitions, as used in sources of legislation, are examined as well as literature concerned with children and young people. In addition to publications concerned with perceptions of young people and their economic activities, the next section of this chapter provides an overview of publications concerned with the theoretical considerations underlying the thesis.

### **2.2. Theoretical considerations**

#### **2.2.1 Introducing the use of comparative methods**

Comparative law as construed by Zweigert and Kötz,<sup>1</sup> is concerned not only with the study of the differences and similarities of the legal systems in two or more States, but also with the social contexts, which helped to shape law in particular ways in different societies. In addition to the use of comparative methods for practical purposes, such as aids to the formulation of new legislation, they also lead to a more informed appreciation of the interactions between law and human behaviour. In addition, comparative techniques allow the evaluation of legal policies over time through study of the history of the societies under consideration. Other comparatists,

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<sup>1</sup> Zweigert, K. and H. Kötz (1987). 2nd rev. ed. translated from: *Einführung in die Rechtsvergleichung*, 1971 (1st impression). *An introduction to comparative law*. (Translator, T. Weir) Oxford, Oxford University Press.

such as Kokkini-Iatridou,<sup>2</sup> formulated a classification of the different uses and objectives of comparative techniques, delineating the requisite components of a comparative project, whilst comparative law can also be regarded as a method to solve legal problems.<sup>3</sup>

Comparative studies, which aim at covering a wider spectrum by studying social contexts as well as legal aspects, are likely to include an element of empirical research, possibly by focusing on the perceptions of involved individuals, as described, for instance, by Hammersley and Atkinson.<sup>4</sup> Such a course of action allows the researcher to examine whether there are any systematic differences between the various points of view,<sup>5</sup> which might influence legal practices in the societies studied. Such a comparative method has been chosen for the present research, as further explained in Chapter 3, Section 3. Depending on the circumstances, various methods of data sampling are possible. Common methods are using questionnaires, or interview sessions, designed either as 'focus groups' or as one-to-one question and answer sessions. In a sense one cannot separate face-to-face data collection entirely from observation research, as a researcher will also gain further insight through non-verbal signs. Recording interviews if permitted,<sup>6</sup> or, preferably a combination of recording and note taking,<sup>7</sup> allows the researcher to analyse such data at a later time. Here ethical questions come into play: respondents, whether adults or children, need to be assured

<sup>2</sup> Kokkini-Iatridou, D. (1988). 'De Rechtsvergelijking'. *Een Inleiding tot het Rechtsvergelijkend Onderzoek*. Kokkini-Iatridou, ed. Deventer, Kluwer. pp. 3 - 42.

<sup>3</sup> de Boer, T. M. (1994). 'Uitgangspunten van een rechtsvergelijkende studie.' *Ars Aequi* vol. 43, pp. 303-309.

<sup>4</sup> Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*. 2<sup>nd</sup>. Ed. London, Routledge, p. 2.

<sup>5</sup> Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*, pp. 232-233.

<sup>6</sup> Ethical concerns require that respondents are asked for their informed consent, for instance, before the interview, Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*, pp. 264-265. In this respect the researcher should also ask, whether recording is permitted.

<sup>7</sup> The importance of note taking during the fieldwork phase, has been stressed, as analytic ideas may well arise even at such an early stage, Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*, p. 191.

that their right to privacy will, under all circumstances be upheld.<sup>8</sup> Different methods are used to analyse questionnaire and interview data. Data obtained by the use of questionnaires, in particular, can be analysed using statistical methods, as resulting data sets may be interpreted numerically, see e.g. Wright,<sup>9</sup> possibly using computerised techniques, such as the ones described by, amongst others, Kinnear<sup>10</sup> and Barry.<sup>11</sup> Data obtained through interviewing and/or observation require re-conceptualising into themes or categories in order to acquire an overview of the relative importance of the issues involved. Use of these methods is based on 'grounded theory', a research method, in which theory is developed from the data. The originators of the theory recommended that the formulation of concepts should proceed from the creative use of written sources,<sup>12</sup> allowing the relationships between the different concepts to be mapped.<sup>13</sup> When aiming at qualitative research based on the position that theory develops from the data analysis, a useful book describing the various processes involved, is a more recent text by Mason.<sup>14</sup> As the author comments, in practice one cannot separate the different stages of the generation of theory, data and analysis.<sup>15</sup> In addition, the process is facilitated by use of present-day, data analysis software, based on grounded theory. Instead of allocating a code to each distinct category, which might well lead to the conclusion, that one single code per concept was inadequate, the

<sup>8</sup> According to Hammersley and Atkinson, it is common for researchers to make a distinction between the privacy concerns of children and adults, possibly related to the misconception, that children's private lives are legitimately open to scrutiny in a way that those of adults are not, Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*, p. 267. Similar concerns are applicable, when researching the perceptions of children and young people, see, e.g. the guidelines for educational research from the British Educational Research Association, mentioned in Lewis, A. and G. Lindsay (2000). *Researching Children's Perspectives*. Buckingham, Open University Press, p. 17.

<sup>9</sup> Wright, D. B. (1997). *Understanding Statistics: an Introduction to the social sciences*. London: Sage, ISBN: 0-80397-917-7.

<sup>10</sup> Kinnear, P. R. and C. D. Gray (2001). *SPSS for Windows Made Simple, Release 10*. Hove: Psychology Press, ISBN: 1-84169-118-6.

<sup>11</sup> Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*, p. 267.

<sup>12</sup> Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*, p. 241.

<sup>13</sup> Strass, A. L. and J. Corbin (1990). *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*, Newbury Park, Cal.; London, Sage.

<sup>14</sup> Mason, J. (2002). *Qualitative Researching*, 2<sup>nd</sup> ed., London, Sage.

<sup>15</sup> Mason, J. (2002). *Qualitative Researching*, p. 180.

flexibility of such software allows nesting and/or combining of different codes<sup>16</sup> as well as the creation of semantic networks, thereby assisting theory development.

### 2.2.2. A theory reconciling law and justice

Laws aiming at standards everyone ought to follow, represent something more than the commands of the lawgiver. Unless laws governing people's lives are conceived as legitimate, acceptance of the norms implied in the legislation can only be rationalised by either the fear of sanctions or by the view that law as such deserves to be respected. According to Habermas the validity of law depends on two conditions. The first concerns the question, whether the maximum degree of personal autonomy of those targeted is promoted by law in accordance with fundamental norms. The second condition is, whether citizens are able to exercise their public autonomy by contributing to the development of the laws, to which they will be subject.<sup>17</sup> Habermas posits a proceduralist<sup>18</sup> paradigm for a democratic society, which in his view satisfies the liberal norms of maximum choice and equality of the liberal model, and the factual equality of the welfare model, both of which proved to be inadequate if applied separately. The former neglects factual equality, whilst the latter results in the reduction of the autonomy of its recipients. The proposed paradigm aims at the engagement of citizens as equals in active opinion-forming, by means of communication in the public sphere, resulting in the formulation of non-discriminatory standards. Habermas's discourse theory underlies a model, developed in the course of

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<sup>16</sup> Examples of this kind of software are, for instance 'ethnograph', 'nudist' and 'atlas/ti', software which allows coding or categorising of the resulting data. The first two packages are mentioned by Hammersley, M. and P. Atkinson (1995). *Ethnography: principles in practice*. A comparison of Nudist and Atlas/ti in Barry, C. (1998) 'Choosing Qualitative Data Analysis Software: Atlas/ti and Nudist Compared'. *Sociological Research Online*, vol. 3(3), <http://www.socresonline.org.uk/socresonline/3/3/4.html>. In addition testing of these packages has been possible in practice because of the availability of demonstration systems on the Internet.

<sup>17</sup> Habermas, J. (1998). *Between Facts and Norms*. Oxford, Polity Press.

<sup>18</sup> In accordance with Habermas's conception of the procedures, which secure both the private and public autonomy of the individuals whose activities are regulated, leading to legitimate law.



identifying conditions for understanding through communication,<sup>19</sup> based on the speech-act theories of Austin<sup>20</sup> and Searle.<sup>21</sup> Several other contemporary models, aimed at the explanation of the constitution of advanced modern societies, have been reviewed in Habermas's *Between Facts and Norms*. One of these theories concerns the autopoietic model. This paradigm, which is concerned with systems rather than social actors, ignores the binding force of communication by conceiving society as a network of atomic self-referential units, unable to communicate with each other except by means of their own coded language.<sup>22</sup> The theory of autopoiesis, which explains the disjunction between different social subsystems, is also applicable to different divisions of law, such as human rights law and institutions faced with the implementation of rights, which only exist 'in a manifesto sense'<sup>23</sup> until they have been institutionalised as enforceable claims. As the thesis is concerned with the process, by which ideas about 'what is good for children and what is bad for children' are transformed into the 'soft law' of International Instruments,<sup>24</sup> and subsequently enforced by individual jurisdictions, the autopoietic theory may help to explain discrepancies between the different branches of law.

### 2.3. Defining the subject of the thesis

#### 2.3.1. The meaning of the term 'child'

This section examines the various interpretations of the constituent ideas behind the term 'child labour'. The fact, that being a child is of necessity a temporary state, has led to a multiplicity of definitions depending on the context in which the term is

<sup>19</sup> Habermas, J. (1979). *Communication and the evolution of society*. London, Heinemann Educational Books; Habermas, J. (1998). *On the Pragmatics of Communication*. Frankfurt, Suhrkamp/Massachusetts Institute of Technology.

<sup>20</sup> Austin, J. L. (1962). *How to do things with words*. Oxford, Clarendon Press.

<sup>21</sup> Searle, J. (1969). *Speech Acts: an Essay in the Philosophy of Language*. Cambridge, Cambridge University Press.

<sup>22</sup> Luhmann, N. (1990). *Essays on Self-Reference*. New York, Columbia University Press.

<sup>23</sup> Feinberg, J. (1970). 'The nature and value of rights.' *The Journal of Value Inquiry* (4), p. 265, see also King, M. (1994). 'Children's Rights as Communication: Reflections on Autopoietic Theory and the United Nations Convention.' *Modern Law Review*, p. 395.

<sup>24</sup> Shaw, M. N. (1997). 4th ed. *International law*. Cambridge, University Press, p. 92-93.

used. Although it has become accepted, especially in developed countries, to use different ages as hurdles to be negotiated in order to achieve the status of adulthood, criteria related to experience and competence are conceivably more to the purpose.

#### **2.3.1.1. Definitions using the 'age' delimiter**

##### *The term 'child' as used in legislation*

Legal instruments have little option but to regulate childhood according to calendar age. Before the adoption of the *CRC* the term 'child' remained undefined in International Instruments, whether general human rights Conventions or Instruments concerned specifically with children. Both the 1924 and 1959 *Declarations of the Rights of the Child* refer to 'the child' as a fixed, universally known entity. The 1973 *ILO Convention concerning Minimum Age for Admission to Employment* makes use of the less objectifying expression 'children and young persons,' which clearly refers to two age-groups, with 'children' occupying an age-band below, and 'young persons' above the age of 'entry into full-time labour' linked in the Convention to the end of compulsory schooling.<sup>25</sup>

The *CRC* was the first international instrument to define the concept 'child' by age: 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.'<sup>26</sup> The decision to extend the definition of the term to include young people above the age of sixteen,<sup>27</sup> is a reflection of the view, that society has a duty of protection towards young people until they are able to fend for themselves. In this case the age of eighteen, which also signifies the age of majority and legal capacity in many countries, is regarded as a signpost of independence, despite the likelihood that few young people over sixteen will be happy

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<sup>25</sup> Art. 2(3).

<sup>26</sup> *CRC*, Art. 1. Proposals to use a lower age limits were opposed at the *CRC*'s drafting stage on the ground, that domestic legislation already provided for protective measures up to the age of eighteen, Detrick, S., Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires."* Dordrecht, London, Martinus Nijhoff Publishers, p. 116, §33.

<sup>27</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires,"* p. 116, §33.

to be designated as 'children'.<sup>28</sup> It has been suggested, that fourteen, fifteen or sixteen would have been preferable, as these age limits have been used to delineate criminal responsibility or freedom from parental control in various legal traditions.<sup>29</sup> The *CRC*'s end of childhood age of eighteen has since become the standard for International Instruments concerned with young people. Likewise the term 'child' has been used in national legislation to indicate entitlement to protection for young people under eighteen, for instance in the England and Wales *Children Act 1989*.<sup>30</sup> The same applies to the U.S. Federal labour law, the *Fair Labor Standards Act 1938*, which uses the term 'children' for young people under eighteen,<sup>31</sup> whilst specifying different ages for different types of work. However, moves towards greater protection may at the same time spell increased dependency, encroaching on rights obtained previously.<sup>32</sup> Several jurisdictions make a distinction between the terms 'child' and 'adolescent' or, in the case of labour law, a 'young worker,' avoiding the association of dependence implied by the concept 'child'. An example is the Aruban 1952 *Work Ordinance*, which operates a clear dividing line between 'children' as 'persons of either sex who have not yet reached age 14', and 'adolescents, defined as 'persons of either sex, who have reached age fourteen but who are not yet eighteen'.<sup>33</sup> The first category is given no responsibility whatsoever and is not permitted to engage in any economic activities,

<sup>28</sup> See also an objection from the Professor of developmental psychology at Leiden University: "In the Netherlands we do not regard young people of, say, fifteen to eighteen as 'children' - they are young people or adolescents." Kohnstamm, G. A. (1994). 'Het VN-Verdrag inzake de Rechten van het Kind in discussie: twee vraagtekens bij een mooi verdrag.' *Tijdschrift voor de Rechten van het Kind*, December 1994, pp. 5-6

<sup>29</sup> Hamilton, C. and A. Fiddy (2001). 'At what Age Can I? A guide to age-based legislation.' *Childright* (180), pp. 5-7; Ruxton, S. (1996). *Children in Europe*. London, NCH Action for Children, pp. 305, 312, 371, 496; Cretnay, S. M. and J. Masson (1997). 6th ed. *Principles of family law*. London, Sweet & Maxwell, p. 580.

<sup>30</sup> §105, 'child' means, subject to paragraph 16 of Schedule 1, 'a person under the age of eighteen'.

<sup>31</sup> §§ 201-219.

<sup>32</sup> E.g. in the U.K. the loss of the right to independent social security payments by sixteen and seventeen-year olds, undermines the independence won in *Gillick v West Norfolk AHA* (1985), that granted young people the right to taking independent decisions, see Masson, J. (1995). 'The Children Act 1989 and Young People: Dependence and rights to independence'. *Childhood and Parenthood: proceedings of ISA Committee for Family Research*. London, Institute of Education, University of London, pp. 217-218.

whilst the second may work full-time. The Dutch child labour legislation *Arbeidstijdenwet* 1995 (*Working Times Act*) makes a distinction between a 'child', who is 'a person below sixteen years,'<sup>34</sup> allowed to engage in 'light work' only, and 'young employees'<sup>35</sup> between sixteen and eighteen. However, this division does not occur in the *Arbeidsomstandighedenwet* (*Arbowet*) 1998, which establishes safety measures and working conditions for different categories of workers, as all 'workers under the age of eighteen' are classified as 'young employees.'<sup>36</sup> The Dutch Civil Code uses the more general definition of a 'minor' as 'a person under eighteen, who is not married or engaged in a registered partnership or has been declared of age'<sup>37</sup>, or has been married or engaged in a registered partnership, reserving the term 'child' to signify family relationship, for instance, an individual entitled to parental support until the age of twenty-one.<sup>38</sup> In this system, as in many others, the various milestones of independence form part of an illogical and unconnected system of ages:<sup>39</sup> age of majority at eighteen, age of end of parental support at twenty-one and, in addition, the age of twenty-three at which young people become entitled to the adult minimum wage.

Other definitions of young people under eighteen may carry a bundle of associations. For instance, the definition of the term 'minor' in the Californian Labor Code<sup>40</sup> as 'any person under the age of eighteen years, who is required to attend school [.] and any person under the age of six', i.e. below the age of compulsory

<sup>33</sup> Art. 4, *Work Regulation Ordinance*.

<sup>34</sup> *WIA*, Art. 1:2.-1.

<sup>35</sup> *WIA*, Art. 1:1.-3.

<sup>36</sup> *Arbeidsomstandighedenwet* (*Working Conditions Act*), Chapter 1(1)(3).

<sup>37</sup> Art. 1: 233 BW (i.e. Civil Code) or has been declared of age, subject to Art. 1:253ha BW.

<sup>38</sup> Art. 1:395a. BW. When the age of majority was lowered from twenty-one to eighteen (01/01/1980), young people between eighteen and twenty-one did not become eligible for independent social security benefit (ABW, Art. 9(1)(e)). Unless there are compelling reasons for a young person to live independently, parents remain responsible for her upkeep until the age of twenty-one. Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 69.

<sup>39</sup> Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39, p. 67.

education applicable to the State, is linked with a provision, which prohibits work below the age of eighteen during school hours, unless the young person concerned is over sixteen and in possession of a certificate of proficiency.<sup>41</sup>

*Importance of the 'age' delimiter in the literature*

One of the earliest surveys of child work<sup>42</sup> uses a definition of 'child labour' as 'dangerous work jeopardising the health, safety and morals of children under sixteen,' first introduced by the ILO for night work in the entertainment industry.<sup>43</sup> The same criterion has been used in the 1973 ILO *Minimum Age Convention* for hazardous work in connection with young people of eighteen.<sup>44</sup> The two markers, age of entry into labour and age of the end of schooling are linked explicitly.<sup>45</sup> The *Minimum Age Convention* specifies an age for the entry into labour as 'not less than the age of completion of compulsory schooling, and in any case 'not less than fifteen years,'<sup>46</sup> although sixteen is regarded preferable.<sup>47</sup> However, if a state's 'economy and/or educational facilities are insufficiently developed, the school leaving age/age of entry into labour may initially be fixed at fourteen.'<sup>48</sup> In that case States Parties are charged with raising the age of entry progressively, when their economic situation improves.<sup>49</sup>

However, young people under the age of entry into labour are permitted to work for a number of hours in addition to the time spent at school, which is regarded as

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<sup>40</sup> Labor Code §1286(c).

<sup>41</sup> 'Education Code: §48412: (a) Any person 16 years of age or older, who according to EC 48410 (e) has 'successfully demonstrated proficiency equal to or greater than standards established by the State Department of Education pursuant to Section 48412', is 'exempted from compulsory attendance in continuing education classes.'

<sup>42</sup> Challis, J. and D. Elliman (1979). *Child Workers Today*. Sunbury, Quartermaine House (Anti-Slavery Society Study), p. 9.

<sup>43</sup> Expression used in Art. 3, *Minimum Age Convention*, 1973, C138 for work regarded hazardous for young people under eighteen. A similar expression: 'dangerous to life, health or morals' was used earlier in Art. 5(3), C79 *Night Work of Young Persons (Non-Industrial Occupations)* Convention, 1946, depending on the nature of the entertainment for which a licence is requested.

<sup>44</sup> Art. 3(1).

<sup>45</sup> ILO (1986). *Child Labour: Targeting the Intolerable; Report VI (1)*. Geneva, International Labour Office, p. 35.

<sup>46</sup> Art. 2(3).

<sup>47</sup> Art. 7(1), ILO R146 *Minimum Age Recommendation*, 1973.

<sup>48</sup> *Minimum Age Convention*, Art. 2(4).

<sup>49</sup> *Minimum Age Convention*, Art. 1.

being in a different category from 'work'. For children between thirteen and sixteen this work may only take the form of an occupation classified as 'light work', depending on two conditions: the child must be protected from harm - extended from 'harm to health' to 'harm to development' - and her school attendance may not be compromised.<sup>50</sup> By implication all work, which does not fall under occupations classified as 'light',<sup>51</sup> is regarded as objectionable. In consequence lack of access to education as constituting harm to a young person's development, has become a criterion of exploitation,<sup>52</sup> in addition to risk of physical and moral 'harm,' as well as the contravention of 'the minimum age for admission to employment.'<sup>53</sup>

In industrial countries the norm for children and young people is to attend school until sixteen or, in some cases, eighteen,<sup>54</sup> and to engage in a certain amount of work on the side. In contrast, the concept of 'partial compulsory education,' operated in the Netherlands, allows a young person to regard work from the age of sixteen as the norm,<sup>55</sup> despite a requirement of one day's school attendance a week until the individual's seventeenth birthday.<sup>56</sup>

It has, however, been pointed out that the age criterion is inadequate in many societies as a basis for the definition of the concept 'child.' Instead the transition from childhood to adolescence may well be based on other recognisable social and customary practices, such as 'initiation rites at which children are considered to be ready for work' related to biological factors.<sup>57</sup> As perceptions of the physical and social

<sup>50</sup> Art. 7(1)(a-b).

<sup>51</sup> ILO *Minimum Age Convention*, Art. 7(1).

<sup>52</sup> E.g. 'or to interfere with the child's education', CRC, Art. 32(1).

<sup>53</sup> CRC, Art. 32(2).

<sup>54</sup> E.g. California, Education Code, Chapter 3, Section 48200.

<sup>55</sup> Art. 2, *Leerplichtwet* 1969, 'Beginning and end of the obligation to register'.

<sup>56</sup> Art. 2a, of the *Leerplichtwet*.

<sup>57</sup> Shah, P. M. (1984). 'Strategies on health, development and safety problems of child labour.' *International Child Health*, p. 55. Here 'Initiation rites' does not appear to be linked to specific biological signposts, such as the onset of puberty, as, for instance, in the 1833 Factories Commission Report: '... that [the age] of puberty is established, when the body becomes more capable of enduring protracted labour', Great Britain - Factories Inquiry Commission (1986). 'Report'. *First Report of the Central Board of His Majesty's Commissioners for Inquiring into the Employment of Children in Factories, 1833* p. 52.

skills of children vary to a large extent according to cultural variables,<sup>58</sup> it has been suggested that the concept of 'age' should be regarded as a social variable rather than a fixed measurement.<sup>59</sup> Such a conception of the term 'child' is, however, not helpful in connection with the adoption of legislation.

*Defining the child - by age or by experience?*

It has increasingly become acceptable in the West to categorise children according to age, a method of selection, which does not take account of more elusive benchmarks, such as levels of understanding and maturity. Whilst the age of majority has in many countries been lowered to eighteen, the age of entry into labour, generally linked to the end of compulsory education, has risen to sixteen or even eighteen by the end of the twentieth century from twelve<sup>60</sup> or thirteen<sup>61</sup> in the early 1900s.

Instead of criteria of maturity, based on assessment of psychological or emotional development, Western society has become used to the convenience of the quantifiable yardstick of age, which also conveys an impression of greater objectivity. However, different arbitrary signposts of maturity tend to be used. For instance, the age of majority is eighteen in two of the 'States' of the comparison,<sup>62</sup> whilst the age at which young people have been granted the capacity to contract is sixteen.<sup>63</sup> Other age markers concern the capacity of minors to control their earnings, regulated in the case

<sup>58</sup> Such as views concerning "the relatively early maturity of children in tropical areas", Report IV (2), *Minimum Age for Admission to Employment*, Proceedings of the 57<sup>th</sup> Session of the International Labour Conference, p. 6, § 13.

<sup>59</sup> James, A., C. Jenks, et al. (1998). *Theorizing Childhood*. Cambridge, Polity Press, p. 175.

<sup>60</sup> 1901 *Statutes of California*, Ch. 205, see Chapter 6, footnote 38.

<sup>61</sup> 1911 amendment to the Dutch Labour Law, Neve, J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*. s'Gravenhage, Ministerie van Sociale Zaken, p. 8.

<sup>62</sup> For California: Fam. Code § 6502, Netherlands, Art. 1:233 BW.

<sup>63</sup> Netherlands, Art. 7: 612, BW (Civil Code); In the case of California, Family Code § 6700, 'a minor may make a contract in the same manner as an adult, subject to the power of disaffirmance under Chapter 2'. In the Netherlands, minors under sixteen are able to enter into contract of labour, provided they act with the permission of the legal representative, Art. 7: 612(3), BW. If an incapable minor enters into an agreement, the permission of the legal representative is presumed, if not forthcoming within a month, Art. 612(2); As regards Aruba: 'a minor is capable to contract, provided he acts with the permission of his legal representative, unless the law provides otherwise', Art. 9: 1:234(1) BW (Civil Code).

of California by two somewhat contradictory provisions,<sup>64</sup> whilst young people over the age of sixteen have that capacity in the Netherlands.<sup>65</sup> These markers of adulthood amounted to twenty-one in Aruba, the third 'State' in the comparison, until the adoption in 2001 of a new Civil Code.<sup>66</sup>

Whilst children tend to be treated as objects of parental care until well into their teens in Western societies, it has been suggested that childhood dependency is a social construct, based on a conception of children as incompetent, which overlooks their contribution to domestic work and caring activities.<sup>67</sup> The need to assume responsibilities tends to result in behaviour regarded as 'unchildlike' in the West. Here one first of all thinks of the predicament of children of AIDS-stricken families in Third World countries, compelled by circumstances to look after younger siblings.<sup>68</sup> Even in affluent countries roles may be reversed with children caring for parents with health problems.<sup>69</sup> The view that circumstances are more important than age in defining childhood, put forward by Flekkey,<sup>70</sup> has been confirmed by research into household work by twelve-year-olds in Norway. Findings suggest that conceptions of the meaning of age are largely constructed in conformity with adult expectations: Children accustomed to shouldering their share of household work independently, tend to see themselves as 'bigger', that is to say, further progressed towards independence, than

<sup>64</sup> Family Code, S7500 entitles parents to the services and earnings of a child, despite S7503, 'the employer of a minor shall pay the earnings of the minor' to the minor.

<sup>65</sup> However, a parent with authority over a minor child (Art. 1:245(1) BW (Civil Code) is entitled to the usufruct of his/her property, Art.1:253l BW.

<sup>66</sup> Adoption of a new Civil Code, AB 2001, no 89, in force 01/01/2002 has lowered the age of majority to eighteen, Art. 1:233 BW, 'Minors are persons, who have not reached the age of eighteen, are married or have been married, or have been emancipated in accordance with Art. 253ha. As in the Netherlands majority can be granted to young people over sixteen by means of manumission, Art. 9:235 BW (Civil Code).

<sup>67</sup> Boyden, J. (1991). *Children of the Cities*. London, Zed Books, Morrow, V. (1996). 'Rethinking Childhood Dependency: Children's Contribution to the Domestic Economy.' *The Sociological Review*, pp. 59-80, 75.

<sup>68</sup> <http://www.unaids.org/wac/1997/orphan.html>.

<sup>69</sup> Aldridge, J. and S. Becker (1993). 'Children who care.' *ChildRight* (97), p.13. Even more difficult to cope with are situations, where parents suffer from mental health problems, <http://www.mind.org.uk/information/factsheets/Y/young/young8.asp>.



those doing similar tasks under supervision.<sup>71</sup> In the U.K. the growing independence of young people has been recognised in the concept of 'Gillick competence'.<sup>72</sup> Since then the proposition, that age is an inadequate indicator of maturity, has found expression in International Instruments in phrases such as 'the evolving capacities of the child'.<sup>73</sup> Although society is beginning to come to terms with the proposition that children develop in different ways and at different rates, the term maturity without any further qualification obscures the distinction between emotional and cognitive maturity. Young people, forced to shoulder responsibilities expected of more experienced individuals, may be affected emotionally to a larger extent than they might care to admit, despite their capacity of understanding the situation on an intellectual level.

#### 2.3.1.2. Concepts of childhood

The importance paid to a young person's calendar age, in many cases used as a reason to keep children excluded from the affairs of adults, is relatively recent. The concern with the concept of 'childhood', which according to the Collins English Dictionary stands for 'the condition of being a child', defined as a 'boy or girl between birth and puberty', is associated with a wide range of ideas. Ariès's thesis concerning the emerging awareness of the nature of childhood<sup>74</sup> has been extraordinarily influential, despite the rejection of the claim that 'in medieval society the idea of

<sup>70</sup> Flekkey, M. G. (1992). 'Attitudes to Children - Their Consequences for Work for Children'. *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman. Dordrecht, Martinus Nijhoff Publishers 23, p.144.

<sup>71</sup> Solberg, A. (1997). 'Negotiating Childhood: Changing Constructions of Age for Norwegian Children'. *Constructing and Reconstructing Childhood*. A. James and A. Prout. London, Falmer Press, pp. 137-138.

<sup>72</sup> *Gillick v West Norfolk and Wisbech AHA* [1985].

<sup>73</sup> CRC, Arts. 5 and 14(2); 'capable of communicating his/her own views', *African Charter on the Rights and Welfare of the Child*, Arts. 4(2) and 7, and 'considered by internal law to have sufficient understanding': *European Convention on the Exercise of Children's Rights*, Art. 6(b).

<sup>74</sup> Ariès, P. (1996, first French edition 1960). *Centuries of Childhood*. translated from the French 1st ed. *L'Enfant et la vie familiale sous l'ancien régime*, by R. Baldick, Librairie Plon, 1980, London, Pimlico.

childhood did not exist',<sup>75</sup> which is based on a selective reading of data from a particular class of society.<sup>76</sup> According to Ariès's theory the need for a transitional period is an artificial social construct, which began with a shift in sensibilities in the seventeenth century, culminating in the total separation of the worlds of children and adults in the nineteenth.<sup>77</sup> In the past children, 'accepted as the natural companion[s] of the adult',<sup>78</sup> were introduced to tasks appropriate for their station in life by working side by side with their elders. Whilst this pattern continued in the case of girls, boys were forced to undergo a process of education as preparation for adulthood.<sup>79</sup>

Early writing about children was located in the domain of education, as a process capable of forming children into useful members of society. For instance, Locke regarded a newborn child *tabula rasa*, a blank piece of paper, which, however, showed certain congenital characteristics and was able to absorb ideas.<sup>80</sup> He held that parents had the duty to guide their children towards 'the rational mastery of their desires' in order to counteract any irrational inclinations. In contrast, Rousseau conceived of newborn children as imbued with inborn goodness, to be preserved by a natural child-centred education which followed 'the path nature maps out for them,' illustrated by the lessons contained in his *Émile or on Education*.<sup>81</sup> The belief that education is indispensable to mature into a proper adult, has led to the view that children are

<sup>75</sup> It has been suggested that *feeling, sense or awareness* is closer to the expression '*le sentiment de l'enfance*' Ariès, P. (1996). *Centuries of Childhood*, p. 134; Archard, D. (1993b). *Children: rights and childhood*. London; New York, Routledge, p. 17.

<sup>76</sup> Wilson, A. (1980). 'The Infancy of the History of Childhood: An Appraisal of Philippe Ariès.' *History and Theory*, vol. 19(2), pp 147-153; Pollock, L. (1983). *Forgotten Children: Parent-Child Relations from 1500 to 1900*. Cambridge, Cambridge University Press, pp 54-55.

<sup>77</sup> Ariès, P. (1996). *Centuries of Childhood*, p. 397.

<sup>78</sup> Ariès, P. (1996). *Centuries of Childhood*, pp. 395-396.

<sup>79</sup> Ariès, P. (1996). *Centuries of Childhood*, p. 56.

<sup>80</sup> Locke, J. (1964, 1st ed. 1693). *Some thoughts concerning education*. London, Heinemann Educational Books.

<sup>81</sup> Rousseau, J. J. (1991, translated from the original 1762 edition). first published in 1979 by Basic Books, *Emile or On Education*. (Translator, A. Bloom) London, Penguin Books. The education of girls did not generate the same interest until later, despite the fact, that Chapter V of 'On Education' was devoted to the education of a female, conceived as a soulmate for the main character.

radically different in nature from adults.<sup>82</sup> This difference could take several forms: on the one hand a child came to be seen as the embodiment of innocence to be shielded from moral pollution, on the other, childhood was associated with a weakness and infirmity, that could only be corrected by careful re-moulding of an imperfect product.<sup>83</sup>

These two different conceptions of the nature of a child have given rise to many conceptualisations of children as intrinsically different from adults. James and Jenks speak in this respect of a 'plurality of childhoods,' claiming that 'the particularities of particular socio-cultural contexts' are reflected in society's ideas about children.<sup>84</sup> These range between views of children as 'not yet humans', or of 'idealised beings to be preserved and protected from harm', either way resulting in a construct of 'the child as project'.<sup>85</sup> Both perspectives emphasise the difference between children and adults. The first regards a 'child' as less than human, in need of a series of interventions in order to prepare it for a place in society. Such interventions are designed to help the child to become an individual with a sense of 'self' as well as sufficiently adapted to be admitted to the social order of the society, in which she<sup>86</sup> is born.<sup>87</sup> The second perspective seeks to preserve the difference by protection, which itself leads to greater dependence. The emphasis on difference from the adult norm additionally gives rise to

<sup>82</sup> Contradicted by Raad voor het Jeugdbeleid *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39. p. 59: "Children and adolescents are people, neither more nor less, but they are people-in-their-growth, who are moving from an in essence dependent position towards an independent position in society."

<sup>83</sup> Ariès, P. (1996). *Centuries of Childhood*. pp. 18-111

<sup>84</sup> James, A. and C. Jenks (1996). 'Public Perceptions of Childhood Criminality.' *British Journal of Sociology*, vol. 47(2), p. 317.

<sup>85</sup> Smart, C., B. Neale, et al. (2001). *The changing experience of childhood : families and divorce*. Cambridge, Polity, pp. 7-8.

<sup>86</sup> In order to redress the balance of the generally predominant use of the masculine, the feminine pronoun will be used rather than the masculine, when referring to a child in the singular. 'She' also stands for 'he' and 'her' for 'his'.

<sup>87</sup> Socialisation has been defined as a process, whereby: i) individuals become members of specific social groups, or of society as whole, ii) an individual develops a concept of 'self'. Berger, P. L. and B. Berger (1991). 'Becoming a Member of Society'. *Studying the Social Worlds of Children: Sociological Readings*. F. Waksler. London, Falmer Press, p. 3, see also James, Jenks, et al. *Theorizing Childhood*, pp. 23-25.

the omission of children as a category, subsumed into their families, uncounted and invisible.<sup>88</sup>

An extreme version of the view of children as less than human holds, that children enter the world with an unlimited capacity for pleasure and self-gratification without any regard for the consequences.<sup>89</sup> This view conceives of the child as a force for destruction, inclined to mayhem unless kept in check by strict discipline, in essence going back to the Calvinist perception of children as the inheritors of original sin.<sup>90</sup> The perception of this 'Dionysian child'<sup>91</sup> is in direct contrast with the belief that children are born in a state of grace. The latter perceives children as basically good and pure, associated with the chastity and sweetness of women, to be nurtured in the private sphere of the home and shielded from the aggressive public world of men.<sup>92</sup> The protection of the innocence of childhood, often equated with sexual purity regarded as one of its most precious attributes, came to be seen as increasingly important.<sup>93</sup> At the same time the perception of child as the inheritor of original sin formed a further reason to welcome the civilising influence of the family home. As a result childhood may be portrayed as the happiest time of life, to be spent in childish activities, such as play and schooling only.<sup>94</sup> However, the comfortable middleclass pattern of home and schooling, thought to preserve the child from falling into bad habits, was not applicable to families who could not afford the luxury of economically inactive offspring.

One could argue that the various views of childhood depend both on time and space. Not only are perceptions of children shaped by different social expectations in a

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<sup>88</sup> Qvortrup, J. (1997). 'A Voice for Children in Statistical and Social accounting: a Plea for Children's Right to be Heard'. *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*. Aldershot, Avebury. pp. 86-87.  
Nieuwenhuys, O. (1992). 'Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind.' *Tijdschrift voor de Rechten van het Kind*, September 1992, p. 6.

<sup>89</sup> Jenks, C. (1996). *Childhood*. London; New York, Routledge, p. 71.

<sup>90</sup> James, A., C. Jenks, et al. (1998). *Theorizing Childhood*, p. 10.

<sup>91</sup> Jenks, C. (1996). *Childhood*, p. 71.

<sup>92</sup> Kessen, W. (1979). 'The American child and other cultural inventions.' *American Psychologist*, vol. 34, p. 817.

<sup>93</sup> Ennew, J. (1986). *The Sexual Exploitation of Children*. Cambridge, Polity Press, p. 20.

spatial sense but also through history. Accordingly the child became a passive recipient of love and protection,<sup>95</sup> regarded as incapable of taking control of her life,<sup>96</sup> a need-fulfiller for adults,<sup>97</sup> but also a creature in need of constant monitoring and supervision.<sup>98</sup> These conceptions of children have one thing in common: they are not regarded as having a voice of their own, which is worth listening to.<sup>99</sup>

It has been claimed, that childhood no longer exists, due to the erosion of the dividing line between childhood and adulthood, as children are encouraged to adopt adult roles prematurely through the influence of television.<sup>100</sup> Instead of an individual, 'whose knowledge of life must be under the control of adults',<sup>101</sup> the child has lost its innocence,<sup>102</sup> and is increasingly involved in violent crime and other reprehensible behaviour.<sup>103</sup> It has been argued that Postman's analysis omitted the impact of the promotional strategies of the market, which have the capacity to construct seductive pseudo-realities.<sup>104</sup> By transforming young people into spending individuals, market forces play an important role in their socialisation into roles and attitudes, which

<sup>94</sup> Cunningham, H. (1991a). *Children and childhood in Western society since 1500*. London, Longman, p. 134.

<sup>95</sup> Zelizer, V. A. (1985). *Pricing the Priceless Child*. New York, Basic Books, p. 63.

<sup>96</sup> Nieuwenhuys, O. (1992). 'Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind', p. 5; However, according to Melton, there is evidence, that children have the cognitive capacity to make rational choice earlier than is often assumed, Melton, G. (1983). 'Children's Competence to Consent: a Problem in Law and Social Science'. *Children's Competence to Consent*. G. Melton, G. B. Koocher and M. J. Saks. New York; London, Plenum Press, p. 15.

<sup>97</sup> Flækøy, M. G. and N. H. Kaufman (1997). *The Participation Rights of the Child: Rights and Responsibilities in Family and Society*. London, Jessica Kingsley Publishers, p. 139.

<sup>98</sup> Jenks, C. (1996). *Childhood*. p. 77.

<sup>99</sup> Eekelaar, J. (1992). 'The importance of thinking that children have rights'. *Children's rights: a re-appraisal in the light of the United Nations Convention on the Rights of the Child in International Journal of Law and the Family*, 6(1) pp 221 - 235. P. Alston, S. Parker and J. Seymour. Oxford, Oxford University Press, p. 228; de Langen, M. (1992). 'The Meaning of Human Rights for Children'. *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman. Dordrecht, Martinus Nijhoff Publishers 23, p. 256.

<sup>100</sup> Postman, N. (1983). *The Disappearance of Childhood*. London, W.H.Allen, p. 80.

<sup>101</sup> Postman, N. (1983). *The Disappearance of Childhood*, p. 63.

<sup>102</sup> Read 'ignorance, naivety and deference towards its elders'.

<sup>103</sup> Postman, N. (1983). *The Disappearance of Childhood*, p. 134.

<sup>104</sup> Fox, R. (2000). *Harvesting minds: how TV commercials control kids*. Westport, Connecticut, Praeger, p. 4.

reinforce a culture of consumption.<sup>105</sup> Such a view of consumer socialisation has also fuelled social inequalities of class, race and gender, contributing to a stereotyped view of inner-city landscapes as steeped in crime and lawlessness.<sup>106</sup>

Other recent constructions of the child are due to the growing view, that differential treatment of children has in many cases been unwarranted. A publication by Eekelaar, who argued for a concept of 'developmental interests' to safeguard a child's future interests in the present, has been seminal in this respect.<sup>107</sup> In the Netherlands an important role has been that of de Langen,<sup>108</sup> whose ideas on legal equality have been adopted by the Council for Youth Policy<sup>109</sup> in its advice to the Dutch Government on policy issues regarding the legal position of minors,<sup>110</sup> child labour legislation<sup>111</sup> and gender equality. The last publication merits a special mention, because of the emphasis on three important spheres of children's lives within the context of a multi-cultural society: at home, in school or workplace, and places of recreation.<sup>112</sup>

The debate concerning the changing position of young people has crystallised in the form of International Conventions concerned with children, above all the CRC,

<sup>105</sup> Kline, S. (1993). *Out of the garden: Toys, TV, and Children's Culture in the age of Marketing*. London ; New York, Verso, p. 13.

<sup>106</sup> Chin, E. M. and L. Siew (2001). *Purchasing Power, black Kids and American Consumer Culture*. Minneapolis, Minn., University of Minnesota Press, pp. 3-4.

<sup>107</sup> Eekelaar, J. (1986). 'The emergence of children's rights.' *Oxford Journal of Legal Studies*, vol. 6(2), pp. 161-182.

<sup>108</sup> de Langen, M. (1973). *Recht voor jeugdigen : onderzoek naar rechten en rechtsbeginselen in het jeugdrecht*. Alphen aan de Rijn, Samsom.

<sup>109</sup> Advisory body, established in 1980 with the brief to advise Government concerning youth issues in the widest sense, operating until 1996, when the Council was incorporated into the Council for Social Development, Kroneman, M. (1996). 'De pedagogische opvattingen in de adviezen van de Raad voor het Jeugdbeleid.' *Jeugd en Samenleving* (4), April 1996, p. 162.

<sup>110</sup> Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39.

<sup>111</sup> Raad voor het Jeugdbeleid (1990a). *Jong geleerd oud gedaan?: een advies over de positie van kinderen en jeugdigen in de nieuwe arbeidstijdenwet*. Rijswijk, Raad voor het Jeugdbeleid, Ministerie van Welzijn, Volksgezondheid en Cultuur, and Raad voor het Jeugdbeleid (1990b). *Komt tijd, komt raad: een commentaar op de nota 'Nedere uitwerking van de Jongerenparagraaf uit de Hoofddijnnnota' Arbeidstijdenwet: Nr 266-85/1546K*. Rijswijk, Raad voor het Jeugdbeleid, Ministerie van Welzijn, Volksgezondheid en Cultuur.

which simultaneously represents the child as a bearer of rights and a victim of exploitation. The importance of regarding the child as a holder of rights, including those of participation and self-expression, is that it transforms her into a subject of respect and dignity.<sup>113</sup> This child is also charged with responsibilities, or rather the task of learning how to assume responsibilities as she matures.<sup>114</sup> The view that youth is the most appropriate period for human beings to acquire the skills of citizenship, does, however, not imply, that a learning period during the early years precludes young people from being integrated into society, or that the process should end at the age of majority. On the contrary, the value of education in youth has been interpreted as a precondition for life-long learning, able to build on a 'starting qualification', that should be based on social and personal skills rather than academic qualifications.<sup>115</sup> It has also been argued that the value to society of the school labour of children ought to be acknowledged as a 'system-immanent' form of activity, as it forms part of the societal division of labour. As a logical extension of this suggestion the view has been advanced, that childhood itself is an integrated structural form in society<sup>116</sup>.

The thesis, that the conception of a childhood divorced from adult society is both a recent construct<sup>117</sup> and characteristic of specific societal contexts, is not only based on historical accounts of child labour, but also on traditional practices in the Third World. Until the seventeenth century it was common in Western Europe for families to

<sup>112</sup> Raad voor het Jeugdbeleid (1995). *Sociaal talent in zicht: een advies over de bevordering van maatschappelijke zelfstandigheid van jongens en meisjes*. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur.

<sup>113</sup> Eekelaar, J. (1992). 'The importance of thinking that children have rights', p. 228.

<sup>114</sup> Flekkey, M.G. and N. H. Kaufman (1997). *The Participation Rights of the Child: Rights and Responsibilities in Family and Society*, pp. 37-38.

<sup>115</sup> Eimers, T. and B. Hövels (1994). 'Jongeren moeten leren voor het leven, niet alleen voor werk.' *Jeugd en Samenleving* (7/8), July/August 1994, pp. 435-443.

<sup>116</sup> Qvortrup, J. (1994). 'Introduction, Childhood Matters'. *Childhood Matters: Social Theory, Practice and Politics*. J. Qvortrup, M. Bardy, G. Sgritta and H. Wintersberger. Aldershot, Avebury, p. 23; Qvortrup, J. (2001). 'School-work, paid work and the changing obligations of childhood'. *Hidden Hands: International perspectives on children's work and labour*. P. Mizen, C. Pole and A. Bolton. London, RoutledgeFalmer, p. 102.

<sup>117</sup> Ariès, P. (1996). *Centuries of Childhood*, p. 125.

work together as a unit,<sup>118</sup> whilst children are expected to contribute to their family's well-being in many parts of the world in the present.<sup>119</sup> The proposition, that a 'child who is no longer a baby should be maintained without working' in a special learning environment, set apart from the struggle for survival, just to become a useful member of society, seems extraordinary to many people in the Third World.<sup>120</sup>

### **2.3.2. The meaning of the term 'labour' in connection with children and young people**

#### **2.3.2.1 Work and labour**

It has been suggested that the association of work with children is appropriate in certain carefully circumscribed contexts only, which raises the question how these have been interpreted in the various child labour laws. The following section seeks to provide some clarification to the nebulous concept of 'labour' that constitutes the second element of the term 'child labour.'

The various attempts by sociologists of labour to construct a comprehensive definition of the concepts of 'labour,' 'work' and employment, terms which are often used indiscriminately, have been singularly unsuccessful. They are either longwinded and convoluted<sup>121</sup> or incomplete, such as rather vague statements that 'work' is an activity that requires time and effort and tends to involve an element of direction,<sup>122</sup> whilst 'labour' has connotations of physical effort.<sup>123</sup>

Leaving aside more general definitions of work, one might ask what legal instruments have to say about the work of children. Whilst difference between 'child

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<sup>118</sup> Vleggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*. Assen, van Gorcum, p. 1.

<sup>119</sup> Boyden, J. (1997). 'Childhood and the Policy Makers: a Comparative Perspective on the Globalization of Childhood'. *Constructing and Reconstructing Childhood*. A. James and A. Prout. London, Falmer Press, p. 198.

<sup>120</sup> Mendelievich, E., Ed. (1979). *Children at work*. Geneva, International Labour Office, p. 4.

<sup>121</sup> For instance: 'those physical and mental activities which are intended to transform natural materials in a more useful form, to improve human knowledge and understanding of the world and/or to provide or distribute goods and services' Brown, R. (1978). 'Work'. *Work, Urbanism and Inequality*. P. Abrams. London, Weidenfeld and Nicolson, pp. 10-11.

<sup>122</sup> Gross, E. (1958). *Work and Society*. New York, Crowell, pp 10-11.



work' and 'child labour' has been explained by the exploitative conditions of the latter,<sup>124</sup> one may ask whether the term 'child labour' and 'economic exploitation' of young people should be equated. Child labour legislation is almost unthinkable without the 'age' qualifier, discussed earlier. 'Age' is a recurring element linked to the qualitative components of the articles in several international conventions concerned with children. An example is, for instance, the definition of economic exploitation as 'harmful to the child's development' in the *CRC*<sup>125</sup> in conjunction with a minimum age qualifier.<sup>126</sup>

In general domestic legislation makes no attempt to distinguish between 'child labour' and 'child work,' other than by listing particular types of work as unsuitable for certain age groups, as, for instance, in a digest of California Child Labor Law.<sup>127</sup> Such an approach has led to a definition of 'child labour' as 'work violating federal or state employment standards'.<sup>128</sup> The Federal *Fair Labor Standards Act* uses a similar approach: 'oppressive child labor' means either the 'employment of a minor in an occupation for which he does not meet the minimum age standards of the Act,<sup>129</sup> or 'the employment of children under the age of 16'.<sup>130</sup> The Dutch *Working Times Act* 1995 defines work in relation to children as 'activities by a child in observance of an agreement',<sup>131</sup> thereby covering agreements involving parents. According to the Aruban Labour Ordinance 1954, 'work' prohibited to children under fourteen means 'all work, including work performed outside an enterprise'.<sup>132</sup>

<sup>123</sup> '... the English word 'labour' is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word 'travail,' *Van der Musselle v Belgium* (1984) 6 EHRR, §33.

<sup>124</sup> Fyfe, A. (1989). *Child labour*. Oxford, Polity Press, p. 4, see Chapter 1, Section 1.3.

<sup>125</sup> Art. 32(1), Chapter 5, footnote 111.

<sup>126</sup> Art. 32(2), Chapter 5, footnote 117.

<sup>127</sup> pp. 25-26.

<sup>128</sup> Labor Code 1102.5.

<sup>129</sup> 570.2(b).

<sup>130</sup> S 203(l).

<sup>131</sup> Art. 1:2.-2, Chapter 7, Section 7.3.2.3, *The Netherlands*.

<sup>132</sup> Discounting work for relatives, WRO 15/1, see Table 7. 2, *Aruba*.

If 'work' is defined as 'a financially remunerated activity', a large range of activities falls outside the terms, even though effort may be involved. Whilst the less respectable types of work, often ignored by analysts of child labour, such as prostitution or drug running, would be included, others are arbitrarily left out. For instance, unpaid housework, still mainly the domain of women and girls, would be excluded, unless a 'third person principle' is taken into account. Arguing that domestic work by housewives has a definite economic value instead of being discounted by economists of labour, it postulates the following criterion: 'If an activity is of such character that it might be delegated to a paid worker, then that activity shall be deemed productive'.<sup>133</sup> As mentioned in Chapter 1, a similar proposition underlies a definition formulated by Save the Children,<sup>134</sup> applied however, with the restriction of 'excluding domestic work, such as helping around the home'.<sup>135</sup> Yet domestic work ought to be included in view of the assessment of household work, that it is an activity that 'calls for effort and is regarded by most other people as useful'. In addition, 'it involves relationships with other people, often in the form of proceeding toward their goals or requiring co-operation to proceed towards one's own'.<sup>136</sup> Despite the fact, that the supervision of inexperienced workers takes rather than makes time, which thereby detracts in objective terms from the value of domestic work, children's helping around the house falls in a different category from play, because of its demands on time and effort.<sup>137</sup> However such 'helping' tends to be regarded in affluent countries as a learning experience and a movement towards adult status,<sup>138</sup> rather than as work. Perhaps 'helping' needs qualifying on a scale based on elements of both time and

<sup>133</sup> Reid, M. (1934). *The economics of household production*. New York, Wiley, p. 11.

<sup>134</sup> Chapter 1, section 1.3, footnote 32.

<sup>135</sup> Save the Children (1998). 'Children's perspectives on work'. *Children and work in the UK: reassessing the issues*. B. Pettit. London, Child Poverty Action Group, p. 62.

<sup>136</sup> Goodnow, J. J. (1988). 'Children's Household Work: Its Nature and Functions.' *Psychological Bulletin*, p. 7.

<sup>137</sup> Goodnow, J. J. (1988). 'Children's Household Work: Its Nature and Functions.' p. 6.

<sup>138</sup> Call, K. T. (1998b). 'The Implications of Helpfulness for Possible Selves'. *Adolescents, Work and Family: An Intergenerational Developmental Analysis*. J. T. Mortimer and M. D. Finch. Thousand Oaks, Sage Publications, p. 65.

effort to count as 'work'. Scrubbing floors for hours on end rates by this token as 'work,' whilst washing the dishes does not. Looking after younger siblings for a significant part of the day, feeding them, keeping them amused and tidying up after them, should be considered work, while babysitting for an hour or so, with little brother or sister peacefully asleep in its cot, might be regarded as 'helping out'.

*Definitions of 'child labour' used in the literature*

As with the concept of 'child' definitions abound for 'work' and 'labour,' but few allow inclusion of exploitative practices, where no money changes hands or contracts are involved, thereby ignoring activities by young people, that may prove too taxing or unsuitable for their years. Fyfe makes a distinction between child work and child labour, designating the latter as a subset of the former,<sup>139</sup> namely work exploitative of children, understood as 'activities, which impair the health and development of children'.<sup>140</sup> Exploitation is, however, a concept that lies more in the eyes of the beholder, than that it carries a precise meaning.

Instead of a labour market perspective aimed at the removal of children from places of work by means of compulsory education, the 1990s saw new approaches to the child labour debate. An example is the approach of the International Working Group on Child Labour, which rejects the traditional dichotomy between bad 'child labour', and good 'child work' that tends to dominate the debate, as a simplistic myth.<sup>141</sup> A paper by one of the contributors to the report drew attention to the fallacy of assuming that occupations performed under certain conditions, such as work for parents, without pay, or in the open air, are thereby rendered harmless.<sup>142</sup> Instead of insisting on legal responses, the IWGCL paper proposes an approach, that takes

<sup>139</sup> Fyfe, A. (1989). *Child labour*, p. 19.

<sup>140</sup> Fyfe, A. (1989). *Child labour*, p. 19.

<sup>141</sup> IWGCL (1988). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*. Amsterdam, Defence for Children International and the International Society for the Prevention of Child Abuse and Neglect, p. 34.

<sup>142</sup> White, B. (1994). 'Children, Work and 'Child Labour': Changing Responses to the Employment of Children.' *Development and Change*, vol. 25, pp. 851-852.

account of the children's own priorities,<sup>143</sup> involving the adoption of a 'balance model' to offset 'costs', such as 'health and safety issues' against 'benefits', for instance self-reliance and work experience.<sup>144</sup>

### 2.3.3. Perceptions of work and schooling

Although attempts to define the nature of work appear to be doomed to failure, the importance of employment is not in dispute. It imbues workers with an aura of success, imparting status as well as economic rewards. For many people work means self-realisation and a stable position in life with which to identify.<sup>145</sup> The fact that work is so highly regarded, leads individuals whose activities are not necessarily of direct economic value, such as university students, to refer to study and writing by the term 'work.' However, when it concerns school children, the term 'work' is always qualified by the words 'home' or 'school' in contrast with 'real' work.<sup>146</sup> The difference is one of perception: pursuits of children are located in the realm of the non-serious, even though learning asks a great deal of effort.<sup>147</sup>

As indicated earlier, concepts of age have been crucial for the formulation of international and national legislation concerned with children and young people, covered in Chapters 5 and 7. In addition, the topics discussed in the previous two sections form a frame of reference in particular for Chapter 8, which is concerned with perceptions of work by children and young people among the general public, professionals working with children as well as the young people themselves. In many cases responses are rooted in linkages between concepts of age with notions of immaturity and dependence. In addition, images concerned with children and childhood colour people's attitude towards children and young people. A similar

<sup>143</sup> Formulated by McKechnie, J. and S. Hobbs, cited in IWGCL (1998). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*, pp 61-69.

<sup>144</sup> IWGCL (1998). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*, p. 41.

<sup>145</sup> Grint, K. (2000). 2nd ed. *The Sociology of Work*. Cambridge, Polity Press, p. 1.

<sup>146</sup> Kessen, W. (1979). *The American child and other cultural inventions*, p. 817.

<sup>147</sup> Holt, J. (1975). *Escape from Childhood*. Harmondsworth, Penguin, p. 143.

thought process influences perceptions of work by children as intrinsically different from adult employment: because children are permitted to engage in certain activities, these tend therefore to be regarded as suitable.

## 2.4. Issues concerned with the incidence of child work

### 2.4.1. Statistical information and its shortcomings

An ILO figure of 75 million of children at work worldwide in the late 1970s proved a serious underestimate.<sup>148</sup> By the 1990s the ILO estimate had risen to a figure of some 250 million children between the ages of five and fourteen, of whom 120 million are thought to work fulltime. Some seventy percent of all working children are believed to engage in hazardous work, with perhaps fifty to sixty million children aged between five and eleven working in circumstances too taxing for their age. Another alarming figure is the estimate of some 12,000 fatal accidents per year among child workers.<sup>149</sup> However, most of these so-called estimates are based on no more than guesswork. Whilst it is self-evident that it is impossible to obtain any accurate figures worldwide, such a lack of hard evidence also applies to individual countries, whether in the advanced or the developing part of the world. An added difficulty in estimating the extent of involvement of under fifteen-year-olds is the frequent use of subcontracting arrangements.<sup>150</sup> Exact figures are misleading rather than helpful. For instance, the Vietnamese country report for the IWGCL study quotes a figure of 1,349,052 economically active children, pointing out that this is in all probability an underestimate

<sup>148</sup> Challis, J. and D. Elliman (1979). *Child Workers Today*, p. 10.

<sup>149</sup> 'An estimated 12,000 working children die annually'. Takala, J. D. (2002), *Introductory Report: Decent Work – Safe Work*, International Labour Office, Geneva, XVth World Congress on Safety and Health at Work (Vienna, 27 May 2002), p. 6, [http://www.ilo.org/public/english/protection/safework/wdcongrs/ilo\\_rep.pdf](http://www.ilo.org/public/english/protection/safework/wdcongrs/ilo_rep.pdf).

<sup>150</sup> Bureau of International Labor Affairs (1994). *By the Sweat and Toil of Children, Part I: The use of Child Labor in U.S. export of manufactured products from industry or mining to the United States; a Report to the Committee on Appropriations, U.S. Congress*. Washington. [http://www.ilr.cornell.edu/library/e\\_archive/gov\\_reports/child\\_labor/default.html?page=sweat\\_toll%2Fawest\\_toll](http://www.ilr.cornell.edu/library/e_archive/gov_reports/child_labor/default.html?page=sweat_toll%2Fawest_toll), p. 5.

of the real figure, as children under thirteen have not been included.<sup>151</sup> Children under sixteen (or perhaps fourteen or fifteen, if the age of entry into labour is lower than sixteen) do not figure in any labour statistics, as they are not thought to be in the labour force at all. Even where official figures are available for specific age groups, these are often challenged by NGOs as inaccurate, for example in relation to the Indonesian report for the IWGCL study.<sup>152</sup> In addition, certain categories of working children, such as domestic workers, are omitted because of the hidden nature of their work.<sup>153</sup>

Even if census figures for school enrolment are available, it does not follow, that these have anything to contribute to the question of who works and who does not. First of all, children of undocumented immigrants are not included in the statistics, whilst being *enrolled in school* does not equate with being *at school*. Many children work part-time, before or after school, or during the holidays, some holding several jobs whilst others work occasionally. In addition, the methodology used to obtain figures may be suspect. An example of a questionable statistical practice concerns the figure of a million juvenile prostitutes active in the U.S. presented in evidence to the House of Representatives in 1977. The figure was based on an estimate of 300,000 male juvenile prostitutes, aggregated with a second estimate of 600,000 girls in view of the assumption, that the figure for female juvenile prostitutes would be higher. However, the first figure of 300,000 boy prostitutes has been discredited as 'a journalist's guesstimate'.<sup>154</sup> Sometimes figures derived from local small-scale studies have been extrapolated for larger areas. This method is also questionable, unless the area

<sup>151</sup> IWGCL (1998). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*, p. 7.

<sup>152</sup> IWGCL (1998). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*, p. 7.

<sup>153</sup> ILO (1998). *Child Labour: Targeting the Intolerable; Report VI (1)*, p. 14.

<sup>154</sup> Boyden, J. and J. Ennew, Eds. (1997). *Children in focus: a manual for participatory research with children*. Stockholm, Rädda Barnen, p. 5. These data resurfaced in an analysis of the financial value of juvenile prostitution, Campagna, D. (1985). 'The Economics of Juvenile Prostitution in the USA.' *International Children's Rights Monitor*, vol. 2(1), January 1985, p. 15.

examined is representative for the country as a whole. An estimate of between 90,000 and 300,000 juvenile prostitutes in the U.S., quoted in another report, may be more realistic than the one mentioned earlier, although the omission of the basis for the author's figures is itself a cause for misgivings.<sup>155</sup> It cannot be emphasised enough, that figures quoted are estimates, because of the lack of statistical data.<sup>156</sup> If a study is to be creditable, the methodology used ought to be clearly explained, informing the reader of the basis for the figures.

#### 2.4.2. Legislation and enforcement problems

Legislation regulating child labour has been enacted by most nations. In addition, 118 ILO Member States have ratified the 1947 *Labour Inspection Convention*, undertaking, amongst other things, to enforce the provisions regarding the employment of children and young persons.<sup>157</sup> The *Convention* is, however, applicable to industrial and commercial workplaces only,<sup>158</sup> whilst Governments are permitted to grant exemptions for the areas of mining and transport.<sup>159</sup> In addition, both small workshops and family concerns are often exempt from child labour provisions in national legislation. Also, the standard suggested in the *Convention* for the number of labour inspectors required to ensure enforcement, 'sufficient to secure the effective discharge of the duties of the inspectorate', is a matter of discretion for the government.<sup>160</sup> The first question is what 'sufficient' means in this context. Numbers of inspectors considered necessary at any one time, may change in accordance with changing priorities, which often means reduced. For instance, in 1991 the number of inspectors of the U.S. Labor Department amounted to 878 for the whole of the country,

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<sup>155</sup> Levesque, R. J. R. (1994). 'Sexual use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights', *Brooklyn Law Review* (60), Fall 1994, p. 979.

<sup>156</sup> Qvortrup, J. (1997). 'A Voice for Children in Statistical and Social accounting: a Plea for Children's Right to be Heard', pp. 85-106.

<sup>157</sup> Art. 3.

<sup>158</sup> Arts. 1, 2 and 22.

<sup>159</sup> Art. 2.2.

<sup>160</sup> Art. 10.

down by nine percent from the 961 employed the previous year.<sup>161</sup> As the labor inspectorate's responsibilities concerned many different areas, less than five percent of its time was spent on child labour concerns.<sup>162</sup> Even where the focus is on child labour issues, violations of other regulations may not be recorded.<sup>163</sup> In addition to the level of priority paid specifically to child labour violations, enforceable provisions for punishment of violations are of crucial importance. If fines remain unpaid, or the level of fines imposed is consistently lower than the maximum, it is irrelevant that the law permits the imposition of higher sanctions, in particular, when it concerns large companies worth many millions of dollars.<sup>164</sup> As long as work by young people is neither regarded as real work,<sup>165</sup> nor sufficiently important to be taken seriously, child labour legislation is likely to remain little more than symbolic.

## **2.5. Child labour at the close of the twentieth century**

### **2.5.1. Literature concerned with child labour in general**

The publicity surrounding the events organised in connection with the Year of the Child in 1979 has alerted the public to the precarious existence of many children. Child labour occurred on a much larger scale than expected, despite the ubiquitous enactment of legislation intended to curb the practice. Before 1979 little was known about the work of children, and then only in the affluent part of the world. Well-known

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<sup>161</sup> The figure does not include State inspection forces, varying in numbers between 0 in the case of Utah and 100 for the State of New York (none of whom was occupied with child labour issues exclusively, or an average of 16.61 per State for the 39 States, who completed the Child Labor Coalition's May 2000 questionnaire, <http://www.stopchildlabor.org/pressroom/statesurvres.html>. That same year the figure for California was 81 State inspectors enforcing general compliance with labour laws, but none working on child labour issues exclusively.

<sup>162</sup> Lantos, T. (1992). 'The Silence of the Kids: Children at Risk in the Workplace.' *Labor Law Journal* vol. 43(2), p. 69.

<sup>163</sup> GAO (1998). *Child Labor in Agriculture; Changes needed to better protect Health and Educational Opportunities; Report to Congressional Requesters*, GAO/HEHS 98-193. General Accounting Office, p. 8.

<sup>164</sup> Fines for recurrent child labour infringements of \$100,000 were described as 'not a severe financial deterrent', Lantos, 'The Silence of the Kids: Children at Risk in the Workplace', p. 69.

<sup>165</sup> Holt (1975) *Escape from Childhood*, p.134.



examples are a U.K. survey of the economic activities of schoolchildren<sup>166</sup> and a report on the exploitation of children in the U.S. agricultural sector.<sup>167</sup> The late 1970s saw several publications germane to the subject, mainly concerned with the exploitation of children in the Third World, although many also contain a section concerned with child labour in industrial nations.<sup>168</sup> Towards the late 1980s an ILO publication made an important contribution to the debate, as a number of criteria were introduced, which are as relevant in the twenty-first century as in the twentieth.<sup>169</sup>

#### 2.5.1.1. Sources of inequality: gender, ethnicity and class

Both in the developed and the developing parts of the world, being different from the norm means occupying a less favourable position. The highest standard is still the successful adult white male. Interpersonal power relations may be represented graphically in the form of a grid entitled 'dimensions of exploitation', in which the rich adult white male occupies the top left-hand corner position with the poor black girl child at bottom right, with intermediate permutations in between.<sup>170</sup> However, domination is not simply a function of personal relationships: power proceeds from its institutional character, "exercised [ . ] on those one supervises, trains and corrects."<sup>171</sup>

Girls are second - or perhaps third class - children, as the type of work they are expected to do, serves to perpetuate patterns of patriarchy.<sup>172</sup> In many cultures, the paid, outdoor work of boys is valued, but the unpaid housework, carried out by women and girls inside the home, is not.<sup>173</sup> In addition, the perception of girls as naturally more

<sup>166</sup> Davies, E. (1972). 'Work out of school; the Emrys Davies report'. *Education*, 10 November 1972, pp. i-iv.

<sup>167</sup> Taylor, R. B. (1973). *Sweatshops in the sun: child labour on the farm*. Boston, Beacon Press.

<sup>168</sup> Challis, J. and D. Elliman (1998). *Child Workers Today*, Mendelievich, Ed. *Children at work*.

<sup>169</sup> Fyfe, A. (1989). *Child labour*.

<sup>170</sup> Ennew, J. (1986). *The Sexual Exploitation of Children*, p. 10.

<sup>171</sup> Foucault, M. (1977), *Discipline and Punish*, translated from the French 1st ed. 1975 by A. Sheridan, London, Allen Lane, p. 29.

<sup>172</sup> Fyfe, A. (1989) *Child Labour*, p. 25.

<sup>173</sup> Khair, S. (2000). 'Child Labour Reconsidered: the Employment of the Girl Child in the Bangladesh Garment Industry'. *Gender, law and social justice: international perspectives*. A. Stewart. London, Blackstone, p. 122.

adept at certain tasks than boys encourages a 'sexual dualism', that allows men to embrace non-domestic wage opportunities as a matter of course, whilst women find themselves relegated to subsistence agriculture and the domestic sphere.<sup>174</sup> The assumption that gender segregation is still prevalent in the developed part of the world as well, is confirmed by a U.S. study. For instance, manual and skilled work is dominated by boys, with girls tending to be employed in lower paid clerical jobs.<sup>175</sup> There are, however, signs that the payment gap narrows by late adolescence, while girls' occupational aspirations have risen.<sup>176</sup> The fact that gender differences are still common in the developed world, has been confirmed by research in children's household work, with boys and girls engaged in gender-specific tasks.<sup>177</sup> The issue tends to be confused by the interplay of gender and ethnicity. For instance, according to a study concerned with household work by children, girls helping around the home spent more time in caring roles than boys from all backgrounds.<sup>178</sup> In addition, both boys and girls from ethnic minority groups were found to have gained in competence through participation in household work. However, this was not the case for white boys, who tended to regard household tasks as unnecessary 'make-work' keeping them from more pressing commitments.<sup>179</sup>

As regards differences related to race or ethnicity, labour participation by Hispanic and black children proved lower than by white youth.<sup>180</sup> Such a difference

<sup>174</sup> Fyfe, A. (1989). *Child labour*, p. 25; Khair, S. (2000). 'Child Labour Reconsidered: the Employment of the Girl Child in the Bangladesh Garment Industry', pp. 122, 126, see Chapter 1, section 1.3.

<sup>176</sup> Greenberger, E. and L. D. Steinberg (1983). 'Sex Differences in Early Labour Force Experience: Harbinger of Things to Come.' *Social Forces* (62), p. 469.

<sup>176</sup> Mortimer, J., M. D. Finch, *et al.* (1990). 'Gender and work in adolescence.' *Youth & Society*, vol. 22(2), December 1990, p. 204.

<sup>177</sup> Morrow, V. (1998). 'Rethinking Childhood Dependency: Children's Contribution to the Domestic Economy', p. 66.

<sup>178</sup> Call, K. T. (1996b). 'The Implications of Helpfulness for Possible Selves', p. 70, confirmed by the Raad voor het Jeugdbeleid (1995). *Sociaal talent in zicht: een advies over de bevordering van maatschappelijke zelfstandigheid van jongens en meisjes*, p. 40.

<sup>179</sup> Call, K. T. (1996b). 'The Implications of Helpfulness for Possible Selves', p. 68.

<sup>180</sup> Greenberger, E. and L. D. Steinberg (1988). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*. New York, Basic Books, pp. 20-21; Deseran, F. and D. Keithly (1994). 'Teenagers In the Us Labor-Force - Local-Labor Markets, Race,

may be explained by the isolation of inner-city youngsters from businesses in the suburbs, which tend to employ unskilled labour.<sup>181</sup> Other researchers found that students' work experiences varied by race, as white students were able to engage in more positive relationships with adults than young people of colour.<sup>182</sup>

### 2.5.1.2. Children's work in the affluent part of the world

#### General surveys

Several surveys on the extent of child work in advanced countries have been conducted around 1990 in response to a reported increase in violations. The Dutch Ministry of Social Affairs and Labour Opportunities commissioned a number of reports, both on the extent of work by children and youths<sup>183</sup> and the qualitative aspects of child work with the view of enacting new child labour legislation.<sup>184</sup> Several briefings and factsheets were presented to the U.S. Congress between 1990 and 1992, amongst other things concerned with the characteristics of working children<sup>185</sup> and enforcement practices.<sup>186</sup> Whilst these reports were factual and statistical in character, investigative newspaper reporting has alerted the public to the exploitative character of some of the employment relationships.<sup>187</sup> The fact, that the employment of children has become a

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and Family.' *Rural Sociology*, vol. 59(4), p. 678; Mortimer, J. T., M. D. Finch, et al. (1994). 'Work Experience in Adolescence.' *Journal of Vocational Education Research*, vol. 19(1), p. 210.

<sup>181</sup> O'Regan, K. M. and J. M. Quigley (1996). 'Teenage Employment and the Spatial Isolation of Minority and Poverty Households.' *Journal of Human Resources*, vol. 31(3), p. 693.

<sup>182</sup> Cress, K. (1992). 'Why not ask Students? Urban Teenagers make the Case for working.' *Phi Delta Kappan*, October 1992, p. 174.

<sup>183</sup> Neve, J.H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*.

<sup>184</sup> van Beckhoven, A. (1991a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugd arbeid*. Den Haag, Directoraat-Generaal van de Arbeid van het Ministerie van Sociale Zaken en Werkgelegenheid.

<sup>185</sup> General Accounting Office (1991a). *Child Labor: Characteristics of Working Children*, GAO/HRD-91-83BR. Washington, General Accounting Office.

<sup>186</sup> General Accounting Office (1991b). *Labor's Child Labor Enforcement Efforts: Developments after Operation Child Watch*. Washington, General Accounting Office.

<sup>187</sup> Butterfield, B. D. (1990). 'Children at Work: The Tragedy of Child Labor, In America's Shops, Eateries and Farms Conditions Endanger a New Generation'. *The Boston Globe*, p. 1

common feature of life in many affluent countries, has been confirmed by reports from the U.K.<sup>188</sup> and Denmark.<sup>189</sup>

### 2.5.1.3. Work in different contexts

#### *Alternative punishment schemes*

Since the success of a community service project targeting child shoplifters in the early 1980s,<sup>190</sup> the option of imposing 'work punishments' on young people over twelve has become official Dutch policy. Although the initial results suggested that such punishments are beneficial for the young people in question, a review of the merits of the scheme, comparing the case histories of 200 youths sentenced to a 'task punishment' with a similar number serving traditional sentences, remained inconclusive.<sup>191</sup> Nevertheless the option of imposing a sanction consisting of a number of hours of unpaid work, as compensation for an offence, has been incorporated in the Dutch Criminal Code.<sup>192</sup>

#### *Children's household work*

As suggested by Zelizer, concerned with the transformation from the economically active child into an object of emotional value, children could fulfil a useful role in the present-day household. As women are no longer content to remain homemakers, household tasks could instead be carried out by children, whose contribution would be valued in one-parent families in particular. In addition, such role reversals might also help to break down established family hierarchies.<sup>193</sup> Participation by children in housework may lead to several positive outcomes, such as an

<sup>188</sup> Pond, C., A. Searle, et al. (1991). *The hidden army: children at work in the 1990s. Series (Low Pay Unit pamphlet, no.55)*. London, Low Pay Unit; Lavalette, M. (1994). *Child Employment in the Capitalist Labour Market*. Aldershot, Avebury.

<sup>189</sup> Frederiksen, L. (1999). 'Child and Youth Employment in Denmark; Comments on Children's Work from their own Perspective.' *Childhood - a Global Journal of Child Research*, vol. 6(1), pp. 101-112.

<sup>190</sup> Kruissink, M. (1991). 'Zakken vullen, wordt vakken vullen; jeugdige winkeldieven naar Bureau Halt.' *Algemeen Politieblad van het Koninkrijk der Nederlanden*, vol. 140(18), 14 september 1991, pp. 8-11.

<sup>191</sup> Blees, L. W. and M. Brouwers (1996). *Taakstraffen voor minderjarigen; toepassing en uitvoering opnieuw belicht*. Arnhem, Gouda Quint.

<sup>192</sup> Arts. 77f-77ff, Criminal Code.

<sup>193</sup> Zelizer, V. A. (1985). *Pricing the Priceless Child*, pp. 223-225.

introduction to productive behaviour, initiation into gender roles, increased autonomy and growth of responsible behaviour. According to Goodnow, it did not seem to make any difference, whether the initiative came from children themselves or was due to the involvement of adults in the expectation that children would at some stage take control.<sup>194</sup> The theme of helpfulness implied in children's work in the home suggests that helpful behaviour promotes 'personal growth and enhancement of practical skills as well as a sense of membership and mastery'.<sup>195</sup>

*Work in the entertainment sector*

Research among former child performers suggests that certain conditions, such as a supportive attitude by parents, help young people to cope with the pressures generated by early stardom.<sup>196</sup> A Dutch study, conducted among young performers in the late 1980s, found that the pleasure of participating formed more of an attraction than fame or earnings.<sup>197</sup> As the existing regulations were based on the belief that celebrity status at an early age is detrimental to personal development, it was recommended to reinforce the stimulating aspects of participation in performances, whilst avoiding the pressure of stardom.<sup>198</sup> As stress is also common in the area of competitive sports, it has been suggested that sports could be brought under the same heading.<sup>199</sup>

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<sup>194</sup> Goodnow, 'J. J. (1988). Children's Household Work: its Nature and Functions,' p. 8.

<sup>195</sup> Call, K. T. (1996b). 'The Implications of Helpfulness for Possible Selves', p. 65.

<sup>196</sup> Rapport, L. (1997). 'The Relationships Between Professional Experience, Parenting History, and Adult Adjustment (First Research Report),' [www.minorcon.org/waynestate.html](http://www.minorcon.org/waynestate.html).

<sup>197</sup> van Beekhoven, A. P. M. v. (1991b). *Evaluatie richtlijnen voor het optreden van kinderen*. Den Haag, Ministerie van Sociale Zaken en Werkgelegenheid, Directoraat-Generaal van de Arbeid door Regioplan Onderzoek en Adviesbureau voor Regionale Economie en Locale Ontwikkelingen BV, p. iv.

<sup>198</sup> van Beekhoven, A. P. M. v. (1991b). *Evaluatie richtlijnen voor het optreden van kinderen*, pp. 100-101.

<sup>199</sup> Dunnolly, P. (1997). 'Applying child labour laws to sport.' *International Review for the Sociology of Sport*, pp. 389-408.

### Prostitution

Juvenile prostitution tends to be considered either a problem of law enforcement or of exploitation.<sup>200</sup> Whilst girls are seen as victims, boys are often regarded as capable of fending for themselves.<sup>201</sup> This view is posited by a study of male juvenile prostitution in Amsterdam, with boys taking pride in a professional attitude towards their clients.<sup>202</sup> Because of their apparent self-reliance, the author called the assumption into question, that young people invariably resort to prostitution because of problems experienced in early youth.<sup>203</sup> However, a number of the young men, interviewed for the study, had been thrown out of their homes by parents, because of their sexual orientation,<sup>204</sup> which suggests that their lifestyle was less of an own choice than claimed. In addition, the narrow focus of the study on an apparently successful segment of male juvenile prostitution introduced considerable bias. It has also been argued in other studies of juvenile prostitution that young people tend to be both pushed into sex work by circumstances, and at the same time attracted by the easy money.<sup>205</sup> These push-pull factors are described more fully by Hayes and Trafford: young people without any alternatives may become involved in prostitution to make enough money to survive, whilst subjected to peer pressure. At the same time their involvement may give them a sense of being part of a cohesive community.<sup>206</sup>

<sup>200</sup> Weisberg, D. K. (1985). *Children of the Night: a study of adolescent prostitution*. Lexington, Lexington Books, pp. 120, 205.

<sup>201</sup> "... most of the boys do not have pimps. They band together in small groups and are physically able to fend for themselves." Flores, R. (1996). *Overviews of Child Prostitution: Child Prostitution in the United States*. Forced Labour: the Prostitution of Children; Symposium co-sponsored by the US Department of Labor, Washington US Department of Labor, [http://www.usis.usemb.se/children/child\\_labor3.pdf](http://www.usis.usemb.se/children/child_labor3.pdf), p. 59.

<sup>202</sup> van der Poel, S. (1991). *In de bisnis: professionele jongensprostitutie in Amsterdam*. Arnhem, Gouda Quint, pp. 111-112.

<sup>203</sup> van der Poel, S. (1992). 'In de bisnis: jongensprostitutie als commerciële dienstverlening.' *TS Jeugdonderzoek*, vol. 5(2), juli / aug. p. 2.

<sup>204</sup> van der Poel, S. (1991). *In de bisnis: professionele jongensprostitutie in Amsterdam*, p. 124.

<sup>205</sup> Melrose, M. (1999). *One way street? Retrospectives on childhood prostitution*. London, the Children's Society, pp. 16, 37, 47.

<sup>206</sup> Hayes, C. and I. Trafford (1997), 'Issues for Voluntary Sector Detached Work Agencies', in D. Barrett, *Child Prostitution in Britain: Dilemmas and Practical Responses*, London, the Children's Society, pp. 61-63.

*Agricultural work*

Agricultural work was still being recommended for its character building potential in the late 1970s.<sup>207</sup> The myth of farm work as a healthy occupation has been contradicted by an earlier publication revealing the exploitation of migrant children forced to work in fields sprayed with pesticides.<sup>208</sup> Whilst a recent U.S. report on the extent of child work in agriculture exposes the social isolation and educational disadvantages of farmworker children,<sup>209</sup> unacceptable child work has also been found in other environments, such as the Dutch bulb industry.<sup>210</sup>

Definitions of the nature of work in the publications in the previous section concerned with the economic activities of young people serve to bring the efficacy of the legal approaches discussed in detail in Chapter 7 into perspective. In addition, statistical uncertainties and issues arising from the lack of effective provisions for enforcement may have as much impact in the developed part of the world as in the Third.

**2.6. The history of the abolition of child labour**

The eighteenth century view that child work instills sound economic, social and moral principles,<sup>211</sup> had changed by the mid-nineteenth. The fact, that many children worked long hours in unhealthy and brutalising environments, became a cause for concern among reformers who argued, that children unlike adult workers did not have the legal capacity to become equal parties to a contract of labour.<sup>212</sup> The child labour

<sup>207</sup> Stephens, W. N. (1979). *Our Children Should Be Working*. Springfield, Illinois, Charles C. Thomas.

<sup>208</sup> Taylor, R. B. (1973). *Sweatshops in the sun: child labour on the farm*, pp. 25, 34.

<sup>209</sup> GAO (1998). *Child Labor in Agriculture; Changes needed to better protect Health and Educational Opportunities; Report to Congressional Requesters*, GAO/HEHS 98-193, p. 8.

<sup>210</sup> van Beckhoven, A. P. M. (1990a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*, p. 57.

<sup>211</sup> Defoe, D. (1971, reprint from 1724). *A tour through the whole island of Great Britain*. Harmondsworth, Penguin, p. 3.

<sup>212</sup> Cunningham, H. (1991). *The Children of the Poor: Representations of Childhood since the Seventeenth Century*. Oxford, Blackwell, pp 69-71; "In recommending legislative restriction of the labour of children, as not being free agents, and not being able to protect themselves . . .", Great Britain - Factories Inquiry Commission (1986, reprinted from 1833 Report). 'Report', p. 51. See also van Houten: "And, as regards the freedom of labour and

campaigns of the nineteenth and early twentieth century capitalised on the emotive connotations of the term 'slavery', used as a metaphor for the exploitation of children in the cotton mills, similar to that of the slaves in the West Indies.<sup>213</sup> Although pity for the plight of defenseless children formed the main inspiration for the movement for the abolition of child labour, moral outrage over conditions at variance with the ideal pattern of home and family may also have played an important role.<sup>214</sup>

In addition, it has been argued that the low pay of child workers threatened to depress the demand for adult male labour.<sup>215</sup> By 1833 childhood had been defined as a period in need of legal protection 'until the beginning of the fourteenth year, when the period of childhood, properly so called, ceases'.<sup>216</sup> Below that age home or school was where children belonged.<sup>217</sup> Towards the third part of the nineteenth century the child-saving movement, turned its attention to juvenile delinquency. Although criminal tendencies in adults were regarded as typical of a sub-class of human beings, children and adolescents were thought still capable of being reformed.<sup>218</sup> However, concern over the harsh treatment of young people sentenced as adults went hand in hand with the desire to re-design society in order to prevent future crime. The well-meant efforts of reformers led to the establishment of reformatories, where juvenile delinquents would be shielded from temptation and learn to become useful citizens. Although

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of contract, it seems to be forgotten, that contract is not by the child but about the child," Tweede Kamer der Staten-Generaal (Vergaderjaar 1873-1874). 'Memorie van toelichting.' BHTK, deel 2, blad 34.2, p. 8.

<sup>213</sup> For instance, Coleridge's "efforts on behalf of the poor little white slaves", Coburn, K., Ed. (1973). *The notebooks of Samuel Taylor Coleridge*. London, Routledge and Kegan Paul, III, 4482, February 25, §1819.

<sup>214</sup> Cunningham, H. (1991b). *The Children of the Poor: Representations of Childhood since the Seventeenth Century*, pp. 41-42.

<sup>215</sup> Cunningham, H. (1991b). *The Children of the Poor: Representations of Childhood since the Seventeenth Century*, p. 165; Zelizer, V. A. (1985). *Pricing the Priceless Child*, p. 63.

<sup>216</sup> Great Britain - Factories Inquiry Commission (1986 after 1833 Report). 'Report', p. 52.

<sup>217</sup> As expressed in relation to the twentieth century U.S.: "Properly loved children, regardless of social class, belonged in a domesticated, non-productive world of lessons, games and token money." Zelizer, V. A. (1985). *Pricing the Priceless Child*, p. 11, see also Lee, N. (2001), *Childhood and Society: Growing up in an age of uncertainty*, Issues in Society, ed. T. May, Buckingham: Open University Press, pp. 72-73.

<sup>218</sup> Platt, A. M. (1969). *The Child Savers / The Invention of Delinquency*. Chicago; London, The University of Chicago Press, p. 22.



young people no longer shared the grim fate of the prison population, the view, that the natural state of children is one of helplessness and dependence simultaneously resulted in a reduction of their autonomy. It has also been argued that the intentions of the child savers had as much to do with keeping delinquent and unruly youngsters in their place as with preserving them from an evil fate.<sup>218</sup> Factory children and juvenile delinquents were not the only young people whose lives were transformed by the education system. By the late nineteenth century most Western States had enacted compulsory education legislation with the aim of re-shaping children into dutiful citizens with the right kinds of skills for the country's future.<sup>220</sup> It has been suggested that the process of turning children into professional learners has robbed them of a useful role in society, transforming them from being 'gainfully employed' economic assets into objects of emotional value, playthings for the delight of parents.<sup>221</sup>

The account of the struggle by the Child Labor Coalition against child labour in the U.S., documented by Trattner,<sup>222</sup> is to some extent relevant to the history of child labour in California: work by children and young people is regulated by both Federal and State legislation. However, two accounts of specific aspects of the lives of children in California are particularly relevant, namely a history of children in California<sup>223</sup> and an account of the repercussions on the original population of the uncontrolled influx of Anglo-Americans and Europeans occasioned by the goldrush, leading to the forced labour of many Native American children.<sup>224</sup> The account of the beginnings of child labour legislation, written by a Settlement House worker within decades of its adoption,

<sup>218</sup> Platt, A. M. (1969). *The Child Savers / The Invention of Delinquency*, p. 135.

<sup>220</sup> Ennew, J. (1986). *The Sexual Exploitation of Children*, p. 20.

<sup>221</sup> Zelizer, V. A. (1985). *Pricing the Priceless Child*, pp. 56, 210.

<sup>222</sup> Trattner, W. I. (1970). *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*. Chicago, Quadrangle Books.

<sup>223</sup> Baur, J. E. (1978). *Growing up with California: a history of California's children*. Los Angeles, Kramer.

<sup>224</sup> Cook, S. F. (1976). 'The American Invasion, 1848-1870'. *The conflict between the California Indian and White Civilization*. S. F. Cook, ed. Berkeley, Los Angeles, CA, University of California Press.

forms part of a general history of the development of California's labour law.<sup>225</sup> Written at a time, when the provisions of the original legislation were still being tested in the courts, the book provides a compelling insight into the preoccupations of Californian society in the second half of the nineteenth century. Although working men's clubs had begun to campaign for shorter working hours in the 1860s, in the first instance on behalf of child workers, the main concern of the time was the fear for competition from cheap foreign labour, which led to intense discrimination.<sup>226</sup> The many racial injustices, documented in particular in the last two publications, have left a legacy of inequality on Californian society, as reported in the 1974 Report of the Panel on Youth of the President's Science Advisory Committee.<sup>227</sup> Racial and economic inequalities affecting children in the U.S. have also been documented in recent reports from the Children's Defense Fund.<sup>228</sup> In addition, the history of U.S. poverty has been documented by both Patterson<sup>229</sup> and Sidel,<sup>230</sup> whose work concentrates on hardship suffered by women and children in particular.

The history of child labour in the Netherlands has been documented in two publications by the same author. The first provides an account of child work in the Netherlands from the sixteenth to the late nineteenth century, culminating in the enactment of the first social legislation in the Netherlands, the 1874 *Child Act*, passed despite a climate of extreme liberalism.<sup>231</sup> The new law, which prohibited work in industry by children below the age of twelve, raised a great deal of resistance,

<sup>225</sup> Eaves, L. (1910). *A History of California Labor Legislation*. Berkeley, The University Press.

<sup>226</sup> Eaves, L. (1910). *A History of California Labor Legislation*, pp. 134-161.

<sup>227</sup> Report of the Panel on Youth of the President's Science Advisory Committee (1974), reprint of 1973 edition, *Youth Transition to Adulthood*. Chicago, University of Chicago Press, p. 86.

<sup>228</sup> Children's Defense Fund (2001). *The State of America's Children*. Washington, Children's Defense Fund, pp. xi, 2-3; Children's Defense Fund (2000). *Children in the States*. Washington, Children's Defense Fund, (annual updates on <http://www.childrensdefense.org>), for California, p. 14.

<sup>229</sup> Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*. Cambridge, Mass., Harvard University Press.

<sup>230</sup> Sidel, R. (1996). *Keeping Women and Children last: America's War on the Poor*. New York, Penguin Books USA.

described in the second publication, which continues the history into the twentieth century.<sup>232</sup> Specific events during the beginnings of restrictions on child labour are the subject of more specialised studies, such as an account of child emigration to South Africa<sup>233</sup> and a failed attempt to secure more effective child labour legislation in the late 1870s.<sup>234</sup> The more recent history of Dutch child labour legislation is covered in a survey of contemporary child work,<sup>235</sup> whilst a recent report presents an analysis of the current economic situation of certain groups of children in the Netherlands.<sup>236</sup> For the history of child labour on Aruba use was made of a history of the Antilles Islands covering the slavery period,<sup>237</sup> a survey of the current labour legislation,<sup>238</sup> as very few Aruban publications are concerned with children or childhood.<sup>239</sup>

The publications introduced in this section have been used mainly in Chapter 6, which aims at greater understanding of the forces, that shaped the different societies by studying the past in the form of parallel histories. Chapter 7 also draws on these sources, as current legislation has been drafted in the light of previous provisions. In addition, preconceptions and ideologies have their origin in the past and therefore these publications are also relevant to Chapter 8, which examines perceptions of work by children and young people.

<sup>231</sup> Vleggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*.

<sup>232</sup> Vleggeert, J. C. (1978). 2nd ed. *Kinderarbeid in de negentiende eeuw*. Haarlem, Fibula-Van Dishoeck.

<sup>233</sup> Sicking, I. (1995). *In het belang van het kind : Nederlandse kinderemigratie naar Zuid-Afrika in de jaren 1856-1860*. Utrecht, Vakgroep Geschiedenis der Universiteit.

<sup>234</sup> Postma, A. (1977). *De mislukte pogingen tussen 1875 en 1889 tot verbetering en uitbreiding van de kinderwet van Houten*. Deventer, Kluwer.

<sup>235</sup> Neve J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*.

<sup>236</sup> Snel, E., T. van der Hoek, et al. (2001). *Kinderen in armoede: opgroeien in de marge van Nederland*. Assen, Van Gorcum.

<sup>237</sup> Alofs, L. and L. Dalhuisen (1997). *Geschiedenis van de Antillen: Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten*. Zutphen, Walburg Pers.

<sup>238</sup> Lopez, H. T. and A. Werleman (1994). *Labor Law & Labor By-Laws*. (Translator, A. Werleman) Aruba, Stichting Shon Lopez.

<sup>239</sup> From over two hundred publications in Leiden's University library - the centre for study of the Dutch Caribbean, just two titles, both dating from the 1970s, are concerned with Aruban children.

## 2.7. Child labour - detrimental or beneficial?

Whereas the previous two sections focused on publications concerned with the terminology, nature and incidence of child work, this section reflects the views of child psychologists and other experts concerning the detriments or merits of working at an early age. These include issues of health as well as educational, social or moral development related to work by children and young people.

### 2.7.1. Health risks

One of the first publications to include a section on risks to health in connection with child work was published in 1979,<sup>240</sup> followed by more comprehensive studies of health hazards of work by children.<sup>241</sup> In addition to publications on general risks to health and safety issues, several papers are based on statistical analysis of work-related accidents in the U.S., caused, for instance, by dangerous farm equipment.<sup>242</sup>

### 2.7.2. Developmental issues

A great deal of attention has been given to the question, whether work experience helps or hampers the educational performance of young people. Although it has been claimed, that part-time work gives poor minority students both 'a sense of purpose and an important connection with the outside world',<sup>243</sup> some educationalists maintain that part-time work prepares young people for a future of subservience.<sup>244</sup> Apart from two longitudinal research projects, which were based on purpose-related

<sup>240</sup> Chailis, J. and D. Elliman (1979). *Child Workers Today*, pp. 124-136.

<sup>241</sup> NIOSH Child Labor Working Team (1997). *Special hazard review, Child labor research needs : recommendations from the NIOSH Child Labor Working Team*. Atlanta, Ga, U.S. Dept. of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; WHO (1987). *Children at work: special health risks: report of WHO Study Group*. (Technical report series no.756). Geneva, World Health Organisation.

<sup>242</sup> Suruda, A. and W. Halperin (1991). 'Work-related Deaths of Children.' *American Journal of Industrial Medicine* (19), pp. 739 - 745; Schenker, M. B., et al. (1995). 'Farm-Related Fatalities among Children in California, 1980 to 1989.' *American Journal of Public Health*, vol. 85(1), January 1995, pp. 89-92.

<sup>243</sup> Cress, K. (1992). 'Why not ask Students? Urban Teenagers make the Case for working' pp. 172-173.

<sup>244</sup> Cress, K. (1992). 'Why not ask Students? Urban Teenagers make the Case for working', p 173.

questionnaires,<sup>245</sup> the majority of papers relies on the same dataset,<sup>246</sup> and only a few are based on interviews with young people. An example is a study targeting urban at-risk youths working under the auspices of a school-business-university partnership, which was found to have positive results.<sup>247</sup> However, several of these studies were inconclusive regarding the negative or positive effects of teenage employment.<sup>248</sup>

#### *Educational issues*

According to a 1983 report on the state of American education, educational standards have declined since the 1960s, as students increasingly opt for undemanding subjects.<sup>249</sup> Various assumptions, such as the view that part-time work reinforces economic literacy have been tested on several occasions, suggesting that a moderate amount of work helps young people to remain in employment longer than non-workers, although academic achievement suffers when work occupies more than twenty hours a week.<sup>250</sup> On the other hand, success in education appears to be associated more with the nature of the employment than the number of hours, depending on the opportunity to work independently and to apply knowledge and skills acquired in the classroom.<sup>251</sup>

<sup>245</sup> Greenberger, E. and L. D. Steinberg (1986). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*, Chapter 3, pp. 90-155; Mortimer, Finch, et al. 'Work Experience in Adolescence', p. 39.

<sup>246</sup> The U.S. National Longitudinal Survey of Youth.

<sup>247</sup> Cress, K. (1992). 'Why not ask Students? Urban Teenagers make the Case for working'.

<sup>248</sup> E.g. 'It is not easy to win a hearing for our argument that the benefits of extensive school-year employment have been overestimated and the costs underestimated,' Greenberger, K. and L. D. Steinberg (1986). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*, p. 236; 'Their job descriptions [...] would suggest developmental benefits rather than costs.', Mortimer, J., M. D. Finch, et al. (1994). 'Work Experience in Adolescence', p. 64.

<sup>249</sup> National Commission on Excellence in Education (1983). *A Nation at Risk: The Imperative for Educational Reform; Report to the Nation and the Secretary of Education, United States Department of Education*. <http://www.ed.gov/pubs/NatAtRisk/>, p. 1.

<sup>250</sup> Greenberger, E. and L. D. Steinberg (1986). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*, pp. 118-119; Lillydahl, J. (1990). 'Academic achievement and part-time employment of high school students'. *Journal of Economic Education*, Summer 1990, p. 309.

<sup>251</sup> McNeal, R. B. (1997). 'Are Students Being Pulled Out of High School? The Effect of Adolescent Employment on Dropping Out'. *Sociology of Education*, vol. 70(1), July 1997, p. 220.

*Social issues*

Studies concerned with the workplace as context for socialisation found that, in contrast with work programmes specially designed for school children, most 'naturally occurring' jobs held by young people provided little opportunity for contact with older colleagues.<sup>252</sup> However, contact with college-age co-workers helped part-time workers to find a sense of direction, whilst more than two thirds of respondents in one particular study reported helpful attitude from their supervisor.<sup>253</sup> On the other hand the experience of working in age-segregated workplaces with little adult supervision was largely negative.<sup>254</sup>

*Moral issues*

Where part-time work consisted largely of repetitive and menial tasks with little contact with adults, the experience tended to be negative. In some cases youth work led to an increase in deviant acts and cynicism, serving as a validation of 'membership of the youth culture'.<sup>255</sup> Although a quarter of respondents admitted committing deviant acts, the authors suggest that antisocial behaviour may be related more to lack of supervision in the workplace than stress or job dissatisfaction.<sup>256</sup> Subsequent research found significant correlations between work intensity and the use of alcohol and drugs.<sup>257</sup> According to the authors many of the typical teenage jobs provide easy

<sup>252</sup> Greenberger, E., L. D. Steinberg, *et al.* (1980). 'Adolescents who work: Effects on Part-Time Employment on Family and Peer Relations.' *Journal of Youth and Adolescence* vol. 9(3), pp. 196-197; Greenberger, E. and L. D. Steinberg (1981). 'The Workplace as a Context for the Socialization of Youth.' *Journal of Youth and Adolescence*, (10), pp. 194, 200.

<sup>253</sup> Mortimer, J., M. D. Finch, *et al.* (1994). 'Work Experience in Adolescence', p. 56.

<sup>254</sup> Cress, K. (1992). 'Why not ask Students? Urban Teenagers make the Case for working', p. 174.

<sup>255</sup> Ruggiero, M., E. Greenberger, *et al.* (1982). 'Occupational Deviance among First-time Workers.' *Youth & Society* vol. 13(4), pp. 436-437; Greenberger, E. and L. D. Steinberg (1986). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*, p. 201.

<sup>256</sup> Ruggiero, M. E., L. D. Greenberger, *et al.* 'Occupational Deviance among First-time Workers', p. 444.

<sup>257</sup> Bachman, J. G. and J. Schulenberg (1993). 'How Part-Time Work Intensity Relates to Drug Use, Problem Behaviour, Time Use and Satisfaction among High School Seniors: are these consequences or merely correlates?' *Developmental Psychology*, vol. 29(2), pp. 224-225.

means to the gratification of the rewarding aspects of adulthood without promoting a sense of self-esteem or involvement.<sup>258</sup>

## 2.8. Studies on children's motivation

A more modest body of research is directed at the experiences of young people themselves through the use of interviews. These tend to focus on the motivation of children to spend their free time working instead of in leisure pursuits. Children were generally asked what they liked about their jobs rather than why they started looking for work, which nevertheless gives some insight into their motivation. For the majority their main reason was to earn money that could be spent according to their own priorities. Others valued the responsibility and the opportunity of gaining work experience, the social contacts, a greater variety of tasks than possible at school and the experience of being treated as adults,<sup>259</sup> whilst the youngest workers perceived their tasks as a kind of game.<sup>260</sup> Participants in a study of children employed in artistic productions, in particular, found the work exciting and enjoyable.<sup>261</sup>

Research focusing on young workers indicates, that a considerable number of children make contributions to the family income.<sup>262</sup> Overall, the need for additional income forms the most important motive, either because of family hardship or the wish to purchase expensive but indispensable items, which would distort the family budget. Such motives generally meet with society's approval. On the other hand reasons to work in order to sustain a more lavish lifestyle than parents are prepared to finance, tend to be dismissed as 'indulging in conspicuous consumption'. However, young

<sup>258</sup> Bachman, J. G. and J. Schulenberg (1993). 'How Part-Time Work Intensity Relates to Drug Use, Problem Behaviour, Time Use and Satisfaction among High School Seniors: are these consequences or merely correlates?', p. 232-233.

<sup>259</sup> Save the Children (1998). 'Children's perspectives on work', pp. 63-67.

<sup>260</sup> van Beekhoven, A. P. M. (1990a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdwerk*, pp. iv, 55-56.

<sup>261</sup> van Beekhoven, A. P. M. (1990b). *Evaluatie richtlijnen voor het optreden van kinderen*, pp. 56-57.

<sup>262</sup> Middleton, S., J. Shropshire, et al. (1998). 'Earning your keep? Children's work and contributions to family budgets'. *Children and work in the UK: reassessing the issues*. B. Pettit. London, Child Poverty Action Group, p. 57.

people themselves regarded working as a means to buy 'decent gear', such as mobile phones or trainers of a particular brand. Teenagers tend to be very sensitive how they are rated by their associates, as peer groups assume critical importance in what has been called 'age-segregated technology-based societies such as our own'.<sup>263</sup> It is therefore important to conform to the norms applicable to their peer group, which requires projecting a correct image. This depends largely on external aspects, something eagerly exploited by an advertising industry spreading 'the message that buying the right products helps making a satisfying self'.<sup>264</sup> Other reasons stem from boredom and frustration with educational or recreational activities without any obvious purpose, in contrast with the recognisable goals of work. Also, young people may find recognition and respect by engaging in activities considered suitable for adults, capable of boosting their self-esteem, especially when the result meets with approval from colleagues and employers.

Although it has been suggested, that children work for different reasons in the developing and the affluent parts of the world,<sup>265</sup> this does not follow. According to Fyfe, young people welcome opportunities to work, regarding it a rite of passage to adulthood,<sup>266</sup> whilst an important attraction of employment may reflect the wish 'to be in a different relationship with adults'.<sup>267</sup> Some motivations are likely to be even less direct and tangible, such as attempts to find companionship in compensation for failed personal relationships.<sup>268</sup> In addition, young people without jobs may feel isolated by

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<sup>263</sup> Mussen, P. H., J. J. Conger, *et al.* (1990). *Child development & personality*. New York, Harper Collins, p. 601.

<sup>264</sup> Friedman, L. M. (1994). 1st ed. 1990, *The Republic of Choice*. Cambridge, Mass, Harvard University Press, p. 131.

<sup>265</sup> Boyden, J., B. Ling, *et al.* (1998). *What works for working children?* Stockholm, Save the Children Sweden, p. 10.

<sup>266</sup> Fyfe, A. (1989). *Child labour*, p. 4.

<sup>267</sup> Holt, J. (1995). *Escape from Childhood*, p. 133.

<sup>268</sup> Call, K. T. (1998a). 'Adolescent Work as an 'Arena of Comfort' under Conditions of Family Discomfort'. *Adolescents, Work and Family: An Intergenerational Developmental Analysis*. J. T. Mortimer and M. D. Finch. Thousand Oaks, Sage Publications, pp. 137-138.



not working, when most of their peers are in employment.<sup>269</sup> The importance of prestige and responsibility for a young person's self-esteem inherent in work relationships, is confirmed by the account of a teenager's experience of work in a fast food restaurant. The fifteen-year old found her trust and desire to please betrayed by an employer, who cynically took advantage of her naivety. Flattered by her promotion to the position of 'muffin person,' she was persuaded to work increasingly long hours with neglect of the most basic safety precautions: "They told me they needed me, and I liked the responsibility," she said. "I thought they liked me."<sup>270</sup>

Lastly, whilst gaining work experience in preparation for the world of work has been recognised as a legitimate reason, it is also conceivable that some types of work are found enjoyable precisely, because children are presented with a physical or intellectual challenge. However, overcoming challenges may on occasion become an end in itself, possibly asking too much from an individual's emotional maturity even though physically and intellectually capable of fulfilling the goals.

Studies concerned with the consequences of work by young people during adolescence and young people's own views on working are pertinent to the present research, both as aids in identifying research topics, and as points of reference for the evaluation of the empirical data discussed in Chapter 8. Knowledge of the findings described in these sources also allows comparison with the views of respondents of the present research.

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<sup>269</sup> van Beckhoven, A. P. M. (1990a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*, p. 53;

<sup>270</sup> Butterfield, B. D. (1990). Children at Work: The Tragedy of Child Labor, In America's Shops, Eateries and Farms Conditions Endanger a New Generation. *The Boston Globe*, p. 1.

### **3. Theory and Method**

#### **3.1. Introduction**

The previous chapter gave an overview of the literature, which forms the frame of reference for the thesis. Chapter 3 presents the rationale for a comparative approach to the examination of the influence of law upon child labour practices and attitudes, as well as an overview of the theoretical and methodological grounding for the research. In this context the word 'law' should be understood as a totality, consisting of the body of international human rights Instruments, the collections of rules in force in the legal systems included in the comparison, as well as the activities of administrative bodies charged with implementing these rules. These different legal spheres are capable of functioning, because they are sustained by a complex web of communications. The importance of communications for the legal domain is underlined by Luhmann's view of the legal system itself as 'all social communication formulated with reference to law'.<sup>1</sup> Examination of the influence of law on social practices entails the analysis of the impact of the messages contained in a body of law on its intended audience, i.e. employers as well as children, parents and professionals working with young people. Within the context of communications, there are different levels of understanding of interactions. In its simplest and most mechanical sense, a legal message embodied in a statute may be regarded as a uni-directional broadcast message, which reaches only some of those addressed. However, one can also regard a particular law as a component in a chain of communication linking a sender and one or more receivers, which is incomplete and ineffective until the sender's intention has been understood and internalised. As laws are generally drafted to be comprehensive in order to provide for all possible contingencies rather than as texts to be understood by lay readers, the legal message is unlikely to reach the intended

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<sup>1</sup> Luhmann, N. (1982). *The differentiation of Society*. New York, Columbia University Press, p. 122.

audience in the form in which it entered the statute books. Relevant details may also be spread over different chapters of different statutes enacted at different times.<sup>2</sup> They therefore need to be consolidated and interpreted by intermediaries to be comprehensible to their prospective audience. Where such re-interpretations aim at the purport of the law's intention rather than completeness, certain aspects may be stressed selectively, whilst others stay hidden, depending on the priorities of the interpreters concerned.

When the message reaches a recipient, prepared to give her attention to the message, she needs to be convinced that the claims it contains are reasonable. Employers or persons responsible for a prospective young employee may be persuaded that employing young people in breach of the law is unethical, especially if the message is being reinforced by the threat of sanctions. Such a course of action is, however, not an option in the case of the young people, who tend to be regarded as passive objects of child labour and compulsory education law without any views of their own and yet are the individuals, to whom regulation matters most. Because of their presumed lack of personal involvement, they are not subject to any sanctions, even when actively engaging in prohibited occupations. Therefore other means have to be used to convince young people that regulation of their economic activities is not only in their interest, but also fair. This might be possible by treating young people as addressees of labour legislation as well as their employers and parents or guardians.

According to Habermas, statutes may be considered valid and legitimate when they 'can meet with the assent of all citizens in a discursive process of legislation'.<sup>3</sup> A precondition for such a process is, that a State's legal system should be embedded in a system of rights, giving 'equal weight to both the private and the public autonomy of

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<sup>2</sup> For instance, the sections of the California Labor Code concerned with child labour referring to work permits in the Education and Family Codes (EC 49161, FC 7050) and infringements in the Education and Penal Codes (EC 49182, PC 273(e)) as well as to the FLSA (*Fair Labor Standards Act*).

<sup>3</sup> Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press, p. 110.

citizens.' Such a system needs to be built on basic rights grounded,<sup>4</sup> on what Habermas terms 'the discourse principle', capable of persuading participants in debates to formulate norms that give equal consideration to the interests of all involved individuals.<sup>5</sup> The discourse principle is bound up with a model of communicative power advanced by Arendt,<sup>6</sup> based on concerted action, which is not only able to generate law, but also to uphold its relevance over time.<sup>7</sup> Such a communicative power can only arise from 'undistorted communication in an undeformed public sphere'.<sup>8</sup> Law, generated from the contributions of all citizens, intended to guarantee the rights of all, represents a principle of democracy capable of reconciling different standpoints. Habermas posits a two-stage reconstruction of law, encompassing both democratic self-determination and the rule of law, on the basis of agreements between citizens. Habermas's first stage starts with a 'horizontal sociation of citizens who, recognizing *one another* as equals, mutually accord rights to another'.<sup>9</sup> The second stage of Habermas's theory of democracy consists of the framing of law capable of protecting the individual from unwarranted state interference. In this respect the word 'equals' represents an essential condition: communication between unequals runs the risk of becoming distorted, whether the inequality is due to tangible, objective conditions or to a one-dimensional perception of certain categories of individuals. This applies, for instance, to children, who tend to be regarded as something less than complete persons, to be protected from harm, controlled or supervised. Such attitudes have

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<sup>4</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 118.

<sup>5</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 107.

<sup>6</sup> Arendt, H. (1958). *The human condition*. Chicago, University of Chicago, p. 200; Arendt, H. (1970). *On revolution*. 1970, London, Faber, pp. 40-41, 44.

<sup>7</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 149.

<sup>8</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 148.

<sup>9</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 457.

become institutionalised through protective measures,<sup>10</sup> and prolonged processes of schooling<sup>11</sup> and preparation in order to be admitted to adult society.

Rather than envisaging such opinion formation as taking place in organised state-sponsored meetings, one should think of informal discussions within 'the public sphere'. This is defined as a network 'for communicating information and points of view'.<sup>12</sup> The qualifying criterion for the participation in such discussions consists of the ability to express one's concerns, i.e. to function, according to Habermas's terminology, as 'a competent speaker'.<sup>13</sup> However, the expression 'communicating information' indicates that competence in speaking is based as much on the ability to access information as on being able to express one's thoughts.<sup>14</sup> Habermas has linked the status of an equal, active citizen, grounded in political rights to the ability to make oneself heard in a communicative process. In his view such a communicative network is feasible only, if the communication structures of the public sphere are kept alive by 'an energetic civil society'.<sup>15</sup> However, young people under eighteen have seldom been regarded as citizens of equal value, worth listening to.<sup>16</sup> It has been suggested that this situation will change with the adoption of the CRC, which guarantees children both the rights 'to express their views'<sup>17</sup> and to 'receive and have access to information'.<sup>18</sup> In

<sup>10</sup> 'Adolescents were treated as though they were naturally dependent, requiring constant and pervasive supervision', Platt, A. M. (1969). *The Child Savers / The Invention of Delinquency*. Chicago; London, The University of Chicago Press. p. 4.

<sup>11</sup> '... those one supervises, trains and corrects [...] at home and at school', Foucault, M. (1977). *Discipline and Punish*, translated from the French first ed. 1975, by A. Sheridan. London, Allen Lane, p. 29; see Chapter 2, Section 2.3.1.2.

<sup>12</sup> That is to say, 'opinions expressing affirmative or negative attitudes', Habermas, J. (1996). *Between Facts and Norms*, p. 360.

<sup>13</sup> Habermas, J. (1992). Reprint of the 1984 translation from the German 1981 ed. *The theory of Communicative Action. Reason and the Rationalization in Society*. (Translator, T. McCarthy), Polity Press, p. 138.

<sup>14</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 360.

<sup>15</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 369.

<sup>16</sup> 'It involves the process, so easy for politicians, welfare professionals and even academics to forget: listening to people', Eekelaar, J. (1992). 'The importance of thinking that children have rights'. *Children's rights: a re-appraisal in the light of the United Nations Convention on the Rights of the Child, the International Journal of Law and the Family*, 6(1), P. Alston, et al., eds. Oxford, Oxford University Press, p. 228.

<sup>17</sup> Art. 12(1), see Chapter 4, footnote 65.

common with other Conventions, the *CRC* contains a principle of non-discrimination in Art. 2, regarded fundamental to the interpretation of all the rights granted in the *CRC*.<sup>18</sup> As argued by de Langen, "these generally valid human rights must in principle apply always and for all, and their scope may only be limited for functional reasons."<sup>20</sup>

The foregoing considerations raise a number of questions. First one may ask whether young people who are not yet 'enfranchised citizens'<sup>21</sup> or 'adults',<sup>22</sup> interpreted as 'individuals who not have been granted voting rights', are therefore excluded from the category 'all citizens'. However, based on theories concerning interpersonal understanding formulated by Selman,<sup>23</sup> cited by Habermas,<sup>24</sup> language competence and a capacity for communicative action are present at the conventional stage of interaction,<sup>25</sup> whilst the term 'adult' is associated with a capability for principled moral judgment.<sup>26</sup> This suggests that many young people are capable of the 'reciprocity of behavioural expectations' required for an interaction aiming at shared understanding.<sup>27</sup> Further questions raised in the context of a critical evaluation by Luhmann of Habermas's legal theory concerns the plausibility of the formula 'all those involved',

<sup>18</sup> Arts. 13, 'The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice', and 17, 'States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.'

<sup>19</sup> See Chapter 4, footnote 82.

<sup>20</sup> de Langen, M. (1992). 'The Meaning of Human Rights for Children'. *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman, eds. Dordrecht, Martinus Nijhoff Publishers 23. pp. 256-257.

<sup>21</sup> Habermas, J. (1996). *Between Facts and Norms*, p. 418.

<sup>22</sup> Habermas, J. (1979). *Communication and the evolution of society*. London, Heinemann Educational Books, p. 28.

<sup>23</sup> Selman, R. (1980). *The Growth of Interpersonal Understanding*. New York/London, Academic Press.

<sup>24</sup> Habermas, J. (1990). 'Moral Consciousness and Communicative Action'. *Moral Consciousness and Communicative Action*. Cambridge, Polity Press, p. 142.

<sup>25</sup> Associated with ages ten to fifteen.

<sup>26</sup> Habermas, J. (1990). 'Moral Consciousness and Communicative Action', pp. 142-145.

<sup>27</sup> Habermas, J. (1990). 'Moral Consciousness and Communicative Action', p. 163.

and the presumption, that all subjects might agree to want the same.<sup>28</sup> To some extent, such criticisms have been anticipated by Habermas's modal rendering of the validity criterion, 'can meet with the assent', as 'could agree as participants in a rational discourse'.<sup>29</sup> This softening of the criterion suggests that laws and regulations formulated from a viewpoint of empathy, informed by consultations with individuals from the involved category, could be interpreted as satisfying the modified principle.

However, one may ask to what extent formal equality, as posited by the equality articles proclaimed by International Instruments such as the *CRC*, do result in *de facto* equality, when certain categories of citizens are being perceived as radically different.<sup>30</sup> Also, one might call into question, whether it is at all feasible to interconnect a theoretical framework for the understanding of society with law-related processes in practice. On the assumption that such linkages are within the bounds of reason, it is possible to examine whether young people and professionals speaking on their behalf have been involved in the development of the child labour legislation. One might ask, for instance, whether there have been any amendments of the provisions in connection with feedback by the various participants, in line both with Habermas' theory of communicative action and insights concerning the participation as equals by young people in all matters affecting them.<sup>31</sup>

### 3.2. Law as modelled by communicative action

The previous section introduced Habermas's theory of the validity of law as based on its capacity to meet with the assent of the citizens of a society by means of consensus reached through dialogue.<sup>32</sup> The theory owes a significant debt to Kant's concept of legality based on a claim of rationality to guarantee the freedom of

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<sup>28</sup> Luhmann, N. (1998). 'Quod Omnes Tangit: Remarks on Jürgen Habermas's Legal Theory'. *Habermas on Law and Democracy: Critical Exchanges*. M. Rosenfeld and A. Arato, eds.. Berkeley, London, University of California Press, pp. 158-159.

<sup>29</sup> Habermas, J. (1998). *Between Facts and Norms*, p. 107.

<sup>30</sup> Chapter 2, Section 2.3.1.2.

<sup>31</sup> *CRC*, Arts. 2(1) and 12(1)

<sup>32</sup> Habermas, J. (1998). *Between Facts and Norms*, pp. 104, 110.

citizens.<sup>33</sup> Habermas locates, however, the validity of law in the potential of discourse to reach agreements concerning moral norms instead of in the principle of instrumental reason. The theory is based on a principle of self-legislation according to which the addressees of law are simultaneously the authors of their rights, recalling Rousseau's definition of the 'right of making laws', as acts of the general will of the people, who are both subjects and authors of law.<sup>34</sup>

In contrast with Rawls's original position where participants are ignorant of their situation in life,<sup>35</sup> Habermas's social actors are envisaged as taking part in a rational discussion in the full knowledge of their identity. Such an arrangement enables them to come to a joint agreement concerning the rights they owe each other as equals.<sup>36</sup>

Habermas's interest in the pragmatics of communication first found expression in the early 1970s with the publication of a seminar paper on the subject of communicative competence,<sup>37</sup> inspired by the writing of philosophers of language such as Austin<sup>38</sup> and Searle<sup>39</sup>. The paper forms part of a philosophical debate between Habermas and Luhmann, foreshadowing the significance communications theory was to assume in the work of both authors.<sup>40</sup>

Whereas Luhmann's theory of communication resulted in the formulation of a systems theoretical perspective of law, based on a view of social fields as atomistic

<sup>33</sup> Kant, I. (1974, after the 1887 translation of the 1779 original). *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*. (Translator, W. Hastie) Edinburgh, T. & T. Clark, p. 19.

<sup>34</sup> Rousseau, J. J. (1980). 'The Social Contract'. *Social Contract, Essays by Locke, Hume and Rousseau*. E. Baker. Westport, Greenwood Press, p. 203.

<sup>35</sup> Rawls, J. (1972). *A Theory of Justice*. Cambridge, Mass., Harvard University Press, p. 137.

<sup>36</sup> Habermas, J. (1996). *Between Facts and Norms*, pp. 457-458.

<sup>37</sup> Habermas, J. (1974). 'Wahrheit als Kommunikationsmedium'. *Theorie der Gesellschaft oder Sozialtechnologie?* J. Habermas and N. Luhmann. Frankfurt, Suhrkamp Verlag, pp. 342-360.

<sup>38</sup> Austin, J. L. (1962). *How to do things with words*. Oxford, Clarendon Press.

<sup>39</sup> Searle, J. (1969). *Speech Acts: an Essay in the Philosophy of Language*. Cambridge, Cambridge University Press.

<sup>40</sup> Habermas, J. and N. Luhmann (1974). Reprint of the 1971 ed. *Theorie der Gesellschaft oder Sozialtechnologie?* Frankfurt, Suhrkamp Verlag.



entities,<sup>41</sup> incapable of communicating with one another, Habermas focused on the interaction of the people addressed by law.

As a result his interest in the communicative capacity of language has led to a vision of interaction capable of generating shared understanding among social actors, even when entering a 'speech situation' with different priorities.<sup>42</sup> This interest has resulted in the formulation of a theory of communicative rationality or action used to underpin a view of society as the totality of human relations, capable of being coordinated through the possibility of human endeavour to reach understanding through discourse. The theory of communicative action has subsequently been combined with the philosophical concepts of the existence of three worlds shaping human existence: the objective, the social and the subjective world, to create a model of social order built on co-operation instead of a teleological model of action.<sup>43</sup> According to this theory, agreements are possible because human language contains the universal preconditions for possible understanding. Communicative action presupposes a basis for claims of validity, which partners in discourse are able to respect, in contrast with strategic action oriented to one-sided success.<sup>44</sup> In order to be capable of being vindicated, claims inherent in 'speech acts'<sup>45</sup> have to satisfy the following rules: speech first of all needs to be capable of being understood.<sup>46</sup> Its content must also be 'true', in the sense that the utterance should refer to something, which has an existence in the objective world. In addition, the statement should also be perceived both as 'truthful,' or representing the speaker's intention, and 'right,' that is to say, in conformity with

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<sup>41</sup> Luhmann, N. (1990). *Essays on Self-reference*. New York, Columbia University Press.

<sup>42</sup> Habermas, J. (1996). *The Theory of Communicative Action. Reason and the Rationalization in Society*, p. 101; Habermas, J. (1998). *On the Pragmatics of Communication*. Frankfurt, Suhrkamp/Massachusetts Institute of Technology.

<sup>43</sup> Habermas, J. (1996). *The Theory of Communicative Action. Reason and the Rationalization in Society*, pp. 85, 89.

<sup>44</sup> Habermas, J. (1979). *Communication and the evolution of society*, p. 1.

<sup>45</sup> Expression coined by Searle, J. (1969). *Speech Acts: an Essay in the Philosophy of Language*, to emphasise, that analysis should take place at the level of discourse instead of focusing on discrete expressions.

<sup>46</sup> Habermas, J. (1979). *Communication and the evolution of society*, p. 2.

social conventions.<sup>47</sup> The concept of consensus based on communicative reason, by means of discourses aimed at reaching understanding, also underlies Habermas's work from the early 1990s, such as his *Between Facts and Norms*. The book uses the theory of communicative action<sup>48</sup> to reconcile a view of law as a means to govern society through coercion with a conception of law as the embodiment of norms, which the members of society are able to accept as moral standards which everyone ought to follow.

### 3.3. Comparison as a method of research

The focus of the comparison in the present research is directed at the processes involved in the realisation of the right to protection from exploitation in three legal systems, both in its codified form and as law in action. Comparative methods have been used in connection with both family and labour law, areas under whose terms of reference child work may be studied. Such studies include comparison of narrowly circumscribed areas of law between two or more jurisdictions, but have also been used to give insight in the distinctive features of different legal cultures. Whilst comparison can be used to bring certain aspects of the legal system in one particular society into relief, many comparative studies call attention to differences or similarities of provision in the societies under scrutiny.

Rather than being restricted to establishing differences and similarities of legal areas in two or more societies, research may cover a wider area by focusing on the social forces, which govern the systems of the comparison. This has been expressed as '*everything whatever which helps to mould human conduct in the situation under consideration*'.<sup>49</sup> On the other hand it is also possible to concentrate on the social

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<sup>47</sup> Habermas, J. (1979). *Communication and the evolution of society*, p. 28.

<sup>48</sup> Habermas, J. (1996). *Between Facts and Norms*.

<sup>49</sup> Zweigert, K. and H. Kötz (1987). 2nd rev. ed., translation from the 1971 1st edition., *Einführung in die Rechtsvergleichung. An Introduction to comparative law*. (Translator, T. Weir) Oxford, Oxford University Press, p. 11.

function of law in different legal systems.<sup>50</sup> Although comparative methods can be used as tools to solve legal policy problems by highlighting model solutions applied elsewhere,<sup>51</sup> Zweigert and Kötz hold, that the primary aim of comparative law is knowledge, as of all scientific methods.<sup>52</sup> This knowledge may result in a greater understanding of a particular legal system,<sup>53</sup> but also form the basis for the formation of new theoretical insights.<sup>54</sup> There are no fast and fixed rules concerning the methods of legal comparison. Whilst functionality remains the most important criterion,<sup>55</sup> different jurisdictions may be compared on the basis of specific current provisions or in a historical context, in order to promote understanding of legal and social developments, or both. Interpretation of results of comparison of societies with different linguistic background, however, does not only require skills in handling legal concepts in translation, but also a 'feel' for the legal cultures involved allowing the researcher to link different concepts and notions.<sup>56</sup> In a recent paper comparative techniques serve to evaluate the present regulation of child labour in England and Wales in relation to the standards formulated in the International Legal Instruments, ratified by the United Kingdom.<sup>57</sup>

In the present study comparison is used to highlight differences and/or similarities in approach in three affluent societies to the regulation of child labour in order to establish, to what extent the systems considered are in accordance with

<sup>50</sup> de Boer, T. M. (1994). 'Uitgangspunten van een rechtsvergelijkende studie.' *Ars Aequi*, vol. 43, p. 39.

<sup>51</sup> Kokkini-Iatridou, D. (1988). 'De Rechtsvergelijking'. *Een Inleiding tot het Rechtsvergelijkend Onderzoek*. Kokkini-Iatridou. Deventer, Kluwer, p. 14.

<sup>52</sup> Zweigert, H. and J. Kötz (1981). *An introduction to comparative law*, p. 15.

<sup>53</sup> von Benda-Beckmann, K. (1996). 'Rechtsvergelijking en rechtssociologie.' *De sociale werking van het recht. Een kennismaking met de rechtssociologie en de rechtsantropologie*. Griffiths. Nijmegen, Ars Aequi Libri, p. 580.

<sup>54</sup> Kokkini-Iatridou, D. (1988) 'De Rechtsvergelijking', p. 21.

<sup>55</sup> Zweigert, K. and H. Kötz (1988). *An introduction to comparative law*, p. 31.

<sup>56</sup> Markesinis, B. S. (1997). 'Bridging Legal Cultures, Chapter 10'. *Foreign Law and Comparative Methodology: a Subject and a Thesis*. B. S. Markesinis, ed. Oxford, Hart Publishing, pp. 198-201. See also the introduction of Foster, T. (1999) *Dutch Legal Terminology in English: A Practical Reference Guide*, Leiden, Academic Press.

<sup>57</sup> Hamilton, C. and B. Watt (2004) 'The employment of children.' *Child and Family Law Quarterly*, 16(2), pp. 135-149.

labour standards represented by International Legal Instruments concerned with the work of children and young people. However, on the assumption that the purpose of formulating child labour standards is to ameliorate the situation of young people, comparison between systems, also serves as a means to discover, whether it might be possible to improve on such standards. One may, for instance, query the assumption that children in all cases have to be removed from the labour market in order to allow them to lead a life of fulfilment, or that the kind of education children in developed countries are obliged to follow, under all circumstances benefits all young people.

### **3.4. Systems to be compared**

One might argue that by the twenty-first century different parts of the world have more in common than in the past. Many countries have ethnically mixed populations. Most states subscribe to international human rights instruments, which contributes to a generally held system of values, whilst few states can afford to ignore the views of the international community even where instruments have been signed only.<sup>58</sup> Yet there are still considerable differences between societies one might at first sight regard as largely similar.

Although the study concentrates on the impact of child labour policies in three affluent societies, it is hoped that the findings are of more general relevance. To that end, the perception of participants in the system, comprising the general public and experts working with children, as well as the young people themselves, is of major importance.

The study is concerned with the work of children and young people in affluent societies rather than in the Third World, where child labour is claimed to be a function

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<sup>58</sup> *Vienna Convention on the Law of Treaties*, Art. 18, 'A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty [...] until it shall have made its intention clear not to become a party to the treaty.'

of poverty.<sup>59</sup> This approach allows studying the regulation of the economic activities of children in circumstances, which are not necessarily dictated by expediency or financial constraints. The research focuses on three affluent societies, which occupy different positions in the international human rights system that has developed since the Second World War. As attitudes towards children and young people may be expected to change because of people's awareness of the standards represented by the *Convention on the Rights of the Child*,<sup>60</sup> it was decided to include both countries, which had acceded to the *Convention* and which had so far not done so. The first country to be studied, the Netherlands, has in the main tended towards a culture of human rights and social standards. Like most other West European countries it is a party both to the *CRC* and the *Minimum Age Convention*.<sup>61</sup> It was also one of the first EU member states to enact child labour legislation in conformity with the requirements of Council Directive 94/33/EC 'on the protection of young people at work'.<sup>62</sup> Neither of the other two 'States' used in the comparison had accepted the *Convention on the Rights of the Child*, when I began my research. The principal non-ratifying country is the United States, which has acceded to a handful of International Conventions only, despite being instrumental in their creation. The U.S. has so far ratified one Convention concerned with the rights of children, the 1999 *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Labour Convention)*, and the two Optional Protocols to the *CRC*. However, these Instruments have all been declared as of little domestic relevance.<sup>63</sup> Also, the fact that numerous accidents and cases of serious exploitation of

<sup>59</sup> Fyfe, A. (1989). *Child labour*. Oxford, Polity Press, p. 9; Myers, W. (2001). 'Valuing Diverse Approaches to Child Labour'. *Child Labour*. K. Lieten and B. White. Amsterdam, Aksant Academic Publishers, p. 34.

<sup>60</sup> Confirmed by Woll, L. (2000). *The Convention on the Rights of the Child Impact Study*, Stockholm, Save the Children.

<sup>61</sup> Ratified in 1995 and 1976 respectively.

<sup>62</sup> See Chapter 7, footnote 81.

<sup>63</sup> See Chapter 5, footnotes 230 - 232. Several other Conventions have been signed without subsequent ratification, such as the ILO *Minimum Age Convention*, the *Convention on the*

working children have been reported in the U.S. in the early 1990s,<sup>64</sup> was a further reason to include the U.S. in the research. Although it is not unknown to compare the United States in its entirety with other systems, such comparisons tend to comprise separate studies of closely circumscribed topics by different authors.<sup>65</sup> In order to compare legislation as well as societal aspects in some detail as intended, the country is too vast and its population too diverse for the comparison to be meaningful. Therefore it was decided to concentrate on one of its States, namely California. Although in principle other States could fulfil the conditions, there are several features, which made California the preferred choice. For instance, the State showed awareness of the existence of the child labour problem by amending its child labour provisions during the 1990s. Also, California's boom economy has attracted a large immigrant labour force, which now forms a considerable proportion of the population.<sup>66</sup> Many of these recent citizens make their livelihood by low-paid agricultural work, industrial homework in the information industry or in inner-city sweatshops. When parents do not have a place where offspring can be left in safety, children tend to be taken along to the workplace where they may soon give a helping hand.<sup>67</sup> In addition, California is the home of an entertainment sector, that until the late 1990s was covered by outdated child labour legislation, which took no account of the psychological stress

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*Elimination of all Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the CRC.*

<sup>64</sup> Butterfield, B. D. (1990a). Children at Work: The Tragedy of Child Labor, In America's Shops, Eateries and Farms Conditions Endanger a New Generation. *The Boston Globe*, p. 1.

<sup>65</sup> E.g. Blanpain, R. ed., 'Deregulation and Labour Law in search of a Labour Concept for the 21<sup>st</sup> Century', *Bulletin of Comparative Labour Relations*, 38, Cambridge (Mass.) or Katz, S.N., J. Eekelaar, et al. eds. (2000). *Cross Currents*, Oxford.

<sup>66</sup> 40.64% of the Californian population, 2000 Census results at [http://factfinder.census.gov/bfl/\\_lang=en\\_vt\\_name=DEC\\_2000\\_PL\\_U\\_GCTPL\\_ST2\\_geo\\_id=04000US06.html](http://factfinder.census.gov/bfl/_lang=en_vt_name=DEC_2000_PL_U_GCTPL_ST2_geo_id=04000US06.html), while this comes to 17% overall in case of the Netherlands, rising to nearly 43% in the city of Rotterdam Gemeente Rotterdam (1999). *Rotterdam, Facts & Figures*.

<sup>67</sup> Butterfield, B. D. (1990b). Children at Work: Wave of Children Toll in New Sweatshops. *The Boston Globe*, pp. A1, 27.

posed by early stardom nor provided any protection for child actors from parental cupidity.<sup>68</sup>

The third society included in the comparison is the Caribbean Island of Aruba, a small semi-autonomous 'State', which had not accepted the *CRC* at the beginning of the study. Together with the Netherlands and the five Antilles Islands, Aruba forms part of the 'Kingdom of the Netherlands'. It is one of the more economically advanced societies in transition, and outwardly presents itself as a modern 'state', although its social structure and legislation have changed only marginally since the mid-twentieth century,<sup>69</sup> when the 'State' ceased to be a Dutch colony. For the last fifty years Aruba has been a rather reluctant partner in the quasi-federal 'Kingdom of the Netherlands' together with the five other Caribbean Islands, the *Nederlands Antilles*<sup>70</sup> and the Netherlands (in Europe).<sup>71</sup> Since that time it has sought to distance itself as far as possible from the Antilles Islands, to the extent of intending to leave the Kingdom. Although Aruba decided at the last moment not to secede from the Kingdom, because the relationship with the Netherlands in Europe conveys distinct advantages, it is very different both from the other islands and from the European country. This difference has risen mainly in connection with of Aruba's single-minded drive towards economic prosperity through tourism.<sup>72</sup> The decision to include Aruba in the research was, therefore, based not only on the 'State's' reluctance to accept the standards embodied in the *CRC*, but also on the dearth of publications covering social aspects rather than

<sup>68</sup> Staenberg, M. R. and D. K. Stuart (1997). 'Children as Chattels: the disturbing plight of child performers.' *Beverly Hills Bar Association*, pp. 22-26.

<sup>69</sup> By June 2004 compulsory education has still not been implemented (telephone conversation with a spokeswoman of the Aruban Department of Education, 24/06/2004).

<sup>70</sup> These small semi-independent 'States' are by implication Parties to the European Conventions, but have the power to instruct the Netherlands to initiate acceptance of the United Nations Instruments on their behalf. Aruba therefore forms part of the European Community, 'Council Decision (2001/822/EC) on the association of the European Community with the Overseas Countries and Territories.' (2001). *Official Journal L 314*, 30th November 2001, pp. 0001-0077.

<sup>71</sup> See Appendix 6.

<sup>72</sup> International Monetary Fund (1995). *IMF Staff Country Report no 95/89 – Kingdom of the Netherlands – Aruba. Recent Economic Developments*. Washington, IMF.

tourism topics,<sup>73</sup> in addition to personal misgivings concerning the position of children in such a society.<sup>74</sup> As the decision to include Aruba was not taken until well into the third year of the study, empirical research has been restricted to the perceptions of professionals working with children concerning child work and its conditions in Aruban society, apart from the examination of current and historical child labour provisions.<sup>75</sup>

### **3.5. Areas of comparison**

Several aspects related to the economic activities of young people have been analysed using comparative techniques. These areas include the perceptions of the respective populations of the nature of child labour in the different societies, as well as the examination of current child labour provisions and the historical developments, which gave rise to these provisions.

#### **3.5.1. Comparison of current legislation**

The study first reviews changes in attitudes, which construct young people as holders of social and political rights, in addition to rights of welfare and to protection from various types of exploitation. This is followed by an analysis of the process, by which standards formulated in International Instruments have been realised in enforceable legislation.

Therefore the focus of the comparison of the various national legislations is on the rationale for the enactment, as expressed in the legislative history, the assorted enforcement regimes and the extent to which labour legislation has been realised in the light of basic rights owed to young people.

#### **3.5.2. Child labour issues in comparative historical perspective**

Whilst the thesis is first and foremost concerned with the present, a historical approach helps to illustrate the development of conceptions and policies related to

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<sup>73</sup> See Chapter 2, footnote 239.

<sup>74</sup> Compare the findings of Black, M. (1995), *In the twilight zone: child workers in the hotel, tourism and catering industries*, Geneva: International Labour Office.

<sup>75</sup> Access to Dutch and Aruban source documents was facilitated by my knowledge of the Dutch language.



child labour issues in the light of social change. An overview of child labour practices and attitudes towards children, presented in the form of parallel histories, including developments of the last decades of the twentieth century, aims at bringing the changing ideas concerning the work of children and young people into perspective. Comparison of factors shaping the lives of young people in the past of necessity concentrates on labour legislation and case law. However, instances of the exploitation of young people which tend to be left out of the official histories, have been included in the narrative, as past wrongs are likely to have repercussions in the present, despite the apparent eradication of former inequalities.<sup>76</sup>

### 3.5.3. Perceptions of child employment issues

#### 3.5.3.1. Background considerations

Unlike the comparison of areas such as labour legislation and its legislative history, comparison of perceptions entails taking account of the societal context in which the work of children is located.<sup>77</sup> To that end not only objective factors have to be taken into account, such as inequalities of income, gender and class as illustrated, for instance, by a study of child work in Denmark,<sup>78</sup> but also societal preconceptions. In a recent ILO report, cultural expectations as well as biased attitudes towards gender, race and ethnic differences, tending to social exclusion and discrimination, have been credited with as much importance as poverty in giving rise to child labour.<sup>79</sup> In addition, societal preconceptions have led to the discrimination of girls, as evident from the allocation of tasks as well as the lower rates of pay. Yet gender issues are often neglected in legal discussions concerned with the work of children.<sup>80</sup>

<sup>76</sup> See Sections 6.2.1.1. and 6.2.1.3. and Section 8.5.3.

<sup>77</sup> Smart, C., B. Neale, et al. (2001). *The changing experience of childhood : families and divorce*. Cambridge, Polity, p. 11.

<sup>78</sup> Frederiksen, L. (1999). 'Child and Youth Employment in Denmark; Comments on Children's Work from their own Perspective.' *Childhood - a Global Journal of Child Research*, vol. 6(1), pp. 102, 105.

<sup>79</sup> ILO (2002). *A future without child labour*. Geneva, ILO.  
<http://www.ilo.org/public/english/standards/decl/pub/reports/report3.htm>, p. 47, Table 5.

<sup>80</sup> Nieuwenhuys, O. (1992). 'Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind.' *Tijdschrift voor de Rechten van het Kind*, September 1992, pp. 4-5.

However, inequalities of income can certainly not be discounted. An overview of poverty rates in industrial countries has been provided in a recent UNICEF publication, in both relative and absolute terms.<sup>81</sup> In both cases the countries of continental Northwest Europe occupy a position among the top ten best providers. The U.S., on the other hand, is located in the bottom half of the table, with large numbers of children living in families below the poverty line, whilst it is also among affluent societies with persistent poverty rates.<sup>82</sup> If families suffer hardship, young people are likely to engage in economic activities in order to contribute earnings of their own to the family budget, if only to meet personal expenses.

### 3.5.3.2. Youth questionnaires: rationale and ethical issues

The research focuses on the economic activities of young people below the age of eighteen, which is the upper limit defining the subjects of Children's Rights Conventions as well as the age of majority in many countries.<sup>83</sup> According to a 1989 survey elementary school children seldom engaged in economic activities.<sup>84</sup> It was therefore decided to focus on young people from twelve to eighteen. The study uses the definition of child work introduced in Chapter 1: 'paid work' or 'work that is not paid, but for which an adult would get paid, unless he or she felt constrained to do the work for free due to the moral obligation of family relationship or close friendship'. The

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<sup>81</sup> 'Relative poverty' defined as 50-60% below average family income. Described as 'the effects of the contrast, daily perceived, between the lives of the poor and the lives of those around them.' In the United States, the poverty line is set in dollars for the annual income required for a family of a given size to purchase a range of goods and services seen as constituting the minimum way of life in America. Absolute poverty is defined as 'the inability purchase or consume a fixed minimum package of goods and services'. UNICEF Innocenti Research Centre (2000). *Innocenti Report Card No. 1, June 2000. 'A league Table of Child Poverty in Rich Nations'*. Florence, Italy. <http://www.unicef-icdc.org>, p. 8.

<sup>82</sup> Persistent poverty is defined as having an income below needs in most or all of the years of a specific period, e.g. over ten years in a fifteen-year period, Duncan, G. J. (1991). 'The Economic Environment of Childhood.' *Children in Poverty*. A. C. Huston, ed. Cambridge, Cambridge University Press, p. 538.

<sup>83</sup> Until 2001, when a new Constitution was adopted, the age of majority was twenty-one on the island of Aruba.

<sup>84</sup> See Neve, J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*. s'Gravenhage, Ministerie van Sociale Zaken, p. 23.

qualification is necessary, as relatives or friends may not be paid for tasks such as housework.<sup>85</sup>

The concerns of the young people, whose activities are the subject of research are of major importance for the study. To that end a one-page questionnaire was used to ask young people between twelve and eighteen, many of whom were likely to engage in part-time or holiday jobs, about their attitudes towards certain tasks and their reasons to engage in work in the first place. This phase of the research initially met with rejection in California. When requests to the principals of a number of High Schools in medium-size Californian towns for assistance with the research went unanswered, the School District of San Francisco was approached. Possibly because priority tends to be given to research regarded of benefit to the School District,<sup>86</sup> the application for access to San Francisco High School students in school year 2000-2001 was rejected.<sup>87</sup> Therefore it was decided to make use of more informal channels, such as youth groups and youth advisory services, when next visiting California. In the meanwhile a small number of questionnaires were completed by teenage children of friends in the Netherlands in order to test the design. After making a number of modifications to the layout of the forms, questionnaires were left with adult respondents, willing to bring them to the attention of the children and young people with whom they worked. In consequence, participation by the young people has been

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<sup>85</sup> See Chapter 1, Section 1.3.

<sup>86</sup> 'Preference will be given to studies that will yield findings of value to the District' (Guidelines for Authorization to Conduct Studies in the San Francisco Unified School Districts, Program Evaluation & Research Office, Research Application, 10-99-3).

<sup>87</sup> The San Francisco Program Evaluation & Research Office of the San Francisco Unified School District took an unfavourable decision, despite the fact that two Principals of San Francisco High Schools were prepared to give access to their students. This involved submitting the following forms on 15/03/2000: i) a copy of the questionnaire, both in Spanish and English, ii) a summary of the research project, iii) letter of support from the Chair of Graduate Studies in Law (in the absence of my supervisor, who was abroad), iv) five completed forms supplied by the Unified School District, v) request forms for consent by parents in Spanish as well as English. In addition, a separate completed Form 2 ('Safeguarding Research Participants' Rights & Confidentiality') had to be submitted in the absence of a 'human subjects approval form from another institution,' together with a separate page providing details concerning specific questions.

voluntary.<sup>88</sup> Respondents include clients of a youth advisory service, who were presented with a pile of questionnaires, when entering the premises, a number of disadvantaged children living in a residential home and members of several youth groups. It was possible to approach these groups, as all but two were led and/or administered by individuals, who agreed to being interviewed. In addition, two organisations catering specifically for the needs of ethnic minority children were approached at a later date, as the Californian participating groups clearly included a number of ethnic minority children, whilst this was uncertain in connection with the participating Dutch groups. The majority of the completed questionnaires were returned by post over a period of several months. The total number of completed Dutch questionnaires amounts to sixty-three.

A similar approach applied to the Californian youth groups. Three respondents who were in charge of a youth group agreed to present the questionnaires to their members, once they had ascertained, that the questions were non-threatening. Most forms were completed during a visit to the State, although several forms were left for completion with a number of youth leaders and returned by mail over the next few months. The composition of the groups was as follows: They were, respectively: i) a small-town church-based group with a lower to middle-class membership, also catering for young people from the surrounding countryside, ii) a group with a membership drawn from a poor to lower-class, mixed ethnic district, supported by the local police with the aim of keeping youngsters occupied and off the streets, and iii) a group with a predominantly ethnic minority membership providing educational support to disadvantaged teenagers. The total number of questionnaires completed by Californian young people amounts to seventy-one.

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<sup>88</sup> According to Keith-Spiegel, 'the legal requirement for consent are, that an individual gives his permission *knowingly, intelligently, and voluntarily*', Keith-Spiegel, P. (1983). 'Children and Consent to Participate in Research'. *Children's Competence to Consent*. G. Melton, et al., eds. New York; London, Plenum Press, p. 185.

Whilst the youth group approach was successful in California and the Netherlands, a sample of completed questionnaires, promised by an Aruban youth group leader did not arrive. As the method, used to obtain the samples, consisted of convenience sampling, the data should be considered suggestive rather than statistically significant.<sup>89</sup>

*Ethical issues*

Although care was taken to emphasise the complete anonymity of all participants, as ethical questions come into play in all interactions with research subjects, the importance is even greater in the case of school-age respondents.<sup>90</sup> Not only has a researcher the obligation to approach children in a way, which shows respect for their rights and dignity, but also avoids the appearance of casting their competence into question. In addition, potential reservations by parents or other concerned adults, who feel obliged to shield young people from inappropriate questioning need to be put to rest.<sup>91</sup> Therefore it was essential that questions were perceived as non-threatening, both because of the ethics of making use of minors for research purposes as well as to forestall potential objections from adults acting as 'gatekeepers'.

*Content of youth questionnaires*

The youth questionnaires are identical apart from being administered in two different languages.<sup>92</sup> The main objectives were to discover i) the views of young people concerning restrictions on working hours and conditions, ii) the types of work they engage in and iii) their motivation to engage in part-time work. As the example of friends and schoolmates is understood to constitute a major influence, questions were

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<sup>89</sup> Being employed fulltime in a non-academic position with my vacation falling during the school holidays, the use of questionnaires was the only option at the time.

<sup>90</sup> See, e.g. the guidelines for educational research from the British Educational Research Association, mentioned in Lewis, A. and G. Lindsay (2000). *Researching Children's Perspectives*. Buckingham, Open University Press, p. 17.

<sup>91</sup> In the U.S. individual forms need to be signed by parents to indicate consent for their children to participate in research in order to safeguard schools from charges of acting against parents' wishes, see footnote 87.

<sup>92</sup> Text of the English version attached as Appendix 1.

included about the number of acquaintances with a job and whether close friends are involved in part-time work.

### 3.5.3.3. The general population

Questionnaires, adjusted for the respective countries,<sup>93</sup> were used in order to obtain some idea of the degree of awareness of child labour issues, including recent amendments to the legislation. Further questions concerned the adequacy of provisions to protect children and teenagers from economic exploitation and developmental harm as well as the relative merits of competing out-of-school activities of children. First a small-scale pilot-study was conducted by sending a number of forms to friends both in the U.S. and the Netherlands for comment, which led to a number of adjustments. After modification, the questionnaires were distributed by a number of contacts from very different backgrounds, both to their acquaintances and respondents previously unknown to them.<sup>94</sup> The two samples amounted each to seventy-eight questionnaires. These samples were analysed using quantitative and qualitative methods, as recommended by Wright,<sup>95</sup> Kinnear and Gray,<sup>96</sup> and Barry.<sup>97</sup> Because of the limitations of the research methods used, the resulting data should be considered exploratory. In order to arrive at representative samples of potential child workers in the three societies, a further study might be undertaken, which should include young people following different kinds of vocational programmes. Apart from this stipulation, such a follow-up study should be based on standard sociological sampling methods, i.e. using random sampling, in geographically diverse areas, and

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<sup>93</sup> Translated from English into Dutch with questions concerning ethnic background adjusted in accordance with the composition of the population.

<sup>94</sup> Although over a third of the total number of questionnaires was completed by respondents selected at random - and from different locations, there is no pretence that the resulting sample is anything other than a convenience sample.

<sup>95</sup> Wright, D. B. (1997), *Understanding Statistics: an introduction to the social sciences*. London: Sage.

<sup>96</sup> Kinnear, P. R. and C. D. Gray (2001), *SPSS for Windows Made Simple, Release 10*. Hove: Psychology Press.

<sup>97</sup> Barry, C. (1998) 'Choosing Qualitative Data Analysis Software: Atlas/ti and Nudist Compared'. *Sociological Research Online*, vol. 3(3), <http://www.socresonline.org.uk/socresonline/3/3/4.html>.

among young people of different age bands and different ethnic groups. Results of more extensive samples could be analysed using more advanced computer techniques than in the present study.<sup>88</sup>

#### **3.5.3.4. Interviews with professionals working with young people**

Whilst the questionnaire phase aimed at discovering to what extent a selection of the general population was aware of child labour issues, this gave no indication whether the standards promoted by recent legislation are in accordance with the views of specialists in child development. As the intention was to supplement the data obtained from the questionnaires with qualitative data obtained through interviews, preliminary informal discussions were held with members of organisations involved in campaigns against child labour in the Third World, both in California and the Netherlands. As these discussions proved disappointing, because of the narrow focus on campaigning issues, it was decided to aim at a wider perspective by approaching professionals working with children and young people in various capacities, able to comment on the child labour issue from different angles depending on their particular expertise. Respondents were selected on account of their position in organisations concerned with child and youth welfare, involvement in research in issues pertinent to the study or their responsibility for youth policy issues. In order to identify prospective respondents, a number of preliminary interviews were conducted with representatives of several organisations, such as officials of teachers' unions, representatives of children's rights organisations and multicultural bodies working with young people. In addition, an official in charge of the co-ordination of the implementation of a municipal version of the *CRC* in the city of Rotterdam helped to identify several individuals, who could be approached. Although the sample includes two professionals active in child labour issues, these were in a different position from the individuals mentioned earlier,

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<sup>88</sup> Such as the chi-square and independent samples t- test using SPSS, when comparing data from different countries, relating to young people engaged in part-time work within the

as they worked within the wider frameworks of a trade union and a children's rights organisation. Respondents included the heads of organisations working with former child prostitutes and street children as well as an activist involved in the formulation of an amendment to California's child labour legislation. Other individuals prepared to give the benefit of their expertise were: a police officer in charge of Aruba's 'Youth and Vice' Section, the organiser of informal teaching programmes aimed at undocumented children on Aruba, and the co-ordinator of a city's youth council. The various types of involvement with young people are presented in the form of Table 1 in Chapter 8.

*Purport of the questions*

Semi-structured interviews covered grounds similar to those of the questionnaires distributed to the general public, although with less emphasis on knowledge of current provisions. The looser format of interviews allowed further probing, where respondents did not elaborate out of their own accord. As well as perceptions of the nature and extent of child work,<sup>99</sup> questions to the professionals mentioned above concerned their views on the relationship between education, leisure and part-time work<sup>100</sup> and its significance for the development of young people. In addition, respondents were asked, to what extent gender and/or ethnicity issues were regarded as important.<sup>101</sup> As neither California nor Aruba were obliged to observe the provisions of the *CRC* by the time the interviews took place, the last question concerned respondents' views on the *CRC*. If respondents proved to be aware of the existence of the Convention, they were asked, whether its implementation was thought to promote standards for the well-being of children, including concerns over work and exploitation.

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framework of a structured work programme compared to young people doing such work on a casual basis.

<sup>99</sup> The list of interview questions is attached in Appendix 3

<sup>100</sup> Such as the motivation to replace schooling by work.

<sup>101</sup> See Chapter 2, Section 2.5.1.1.



### **3.6. Methods employed in the evaluation of data**

#### *Quantitative data analysis*

The youth questionnaires and the forms completed by adult respondents have been analysed using SPSS.<sup>102</sup> Generally this involved cross-tabulating nationality with other data. Where there were reasons to assume that professional involvement with children might lead to a difference response, responses from professionals working with children were compared with those of respondents without any professional involvement. As respondents had been invited to add further comments, and several took the opportunity to do so, a number of comments that added to further understanding have been analysed. Where comments were originally in Dutch, these have been translated, when regarded relevant to the study.

#### *Qualitative data analysis*

Responses from professionals working with young people were analysed using the Atlas/TI qualitative analysis package, which allows text input in different languages. Quotations, which were originally in Dutch, have been translated into English, when found to contribute to a wider understanding of the subject.

### **3.7. To conclude**

Comparison of the attitudes towards the economic activities of children and young people in the different 'States' is expected not only to provide an overview of the present situation, but also to what extent labour standards, formulated in connection with adult workers, are regarded as applicable to young people. If there is no ostensible reason other than the fact, that the development of labour law in relation to children is a function of tradition, there is a need to look at the justification for the difference in approach. As it has been suggested, that the rights of specific groups of people, such as children, are in essence the same rights claimed as a common good

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<sup>102</sup> Both in case of the adult questionnaires and interview data, the prefix of respondent codes indicates nationality: NL for Netherlands, CA for California and AR for Aruba.

for all human beings, the next two chapters cover the theoretical grounding of children's rights and an overview of relevant International Instruments.

#### 4. Children's needs and children's rights

##### 4.1. Relationship between children's work and children's rights

The subject of this chapter is the theoretical support for the view, that rights are applicable to children as well as adults, examining arguments both for and against this proposition. Much of the literature surveyed in Chapter 2, Section 7, 'Child labour - detrimental or beneficial?' concerns the question whether the employment of children might in certain circumstances be considered advantageous. During the twentieth century the regulation of children's work became an issue that transcended the confines of national borders, both in consequence of the standard setting by the International Labour Organisation (ILO) and the growing importance of the idea that human beings are the bearers of rights. From its inception the ILO's objective has been the promotion of social justice through the regulation of the conditions of labour, including those relating to young workers.<sup>1</sup>

Although it has been argued, that children are covered by general rights instruments as they were not excluded,<sup>2</sup> their rights had not been made explicit.<sup>3</sup> The notion that children like adults may be bearers of rights has been affirmed by several landmark decisions since the late 1960s,<sup>4</sup> and is no longer in doubt since the adoption of the *Convention on the Rights of the Child (CRC)*. One of the rights, identified by the

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<sup>1</sup> See Preamble of the Constitution of the ILO, <http://www.ilo.org/public/english/about/iloconst.htm#pre>; one of the six conventions adopted in the first year of the ILO's existence, C5, *Minimum Age (Industry) Convention*, 1919 concerned young workers.

<sup>2</sup> See also Doek, J. E. (1995). 'De Ratificatie van het verdrag voor de rechten van het Kind; Enige beschouwingen over de mogelijke gevolgen voor de Nederlandse rechtspraak.' *NJCM-Bulletin*, vol. 20(1), pp. 11-12.

<sup>3</sup> Flekkøy, M. G. (1993). 'Children as Holders of Rights and Obligations', *Broadening the Frontiers of Human Rights; essays in honour of Asbjørn Eide*. D. Gornien, ed. Oslo, Scandinavian University Press, p. 100.

<sup>4</sup> *In re Gault*, 387 U.S. 1 (1967), *Tinker v Des Moines Independent Community School District* (292 U.S. 503 (1969) and *Bellotti v Baird*, 443 U.S. 622 (1979) in the U.S. and *Gillick v West Norfolk and Wisbech AHA*, [1985] 2 WLR (HL) in Britain.

CRC as an entitlement that can be claimed, is the right to 'protection from economic and other exploitation'.<sup>5</sup>

The proposition that human beings possess inherent rights is based on the belief that they are valuable because of their humanity. There are two schools of thought concerning the theoretical grounding for such rights. The first stresses the rationality of human beings and the ability to express their interests and make plans for their future,<sup>6</sup> the other looks towards the wider foundation of concerns people may have, in the sense of issues important to them. The first view, the Kantian 'power' or 'choice' theory of rights, raises the question whether humans unable to exercise rational choices, such as infants or the mentally disabled, should be excluded from being right-holders. The 'interest' theory based on concerns human beings may have in common such as needs, on the other hand, does not depend on a capacity to claim rights at any given moment. 'Interests' have been described as 'comprised of (tentatively and vaguely) the concerns, plans, projects, states of mind and being without which our lives would lose much if not all of their meaning'.<sup>7</sup>

MacCormick has used the issue of children's rights to put the two theories to the test, as the right of each child to be nurtured and cared for, can be claimed as a moral right. According to the 'will theory' of rights, bearers of rights would have the 'liberty' to waive rights due to them.<sup>8</sup> MacCormick argues that the fact, that infants are not in a position to waive their moral right to care, proves that the 'will theory' is untenable,

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<sup>5</sup> Art. 32.

<sup>6</sup> For instance Hart, referring to 'adult human beings capable of choice', Hart, H. L. A. (1984). 'Are there any Natural Rights'. *Theories of Rights*. J. Waldron, ed. Oxford, Oxford University Press, p. 77.

<sup>7</sup> Wolfson, S. A. (1992). 'Children's Rights: The Theoretical Underpinning of the 'Best Interests of the Child'. *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman. Dordrecht, Martinus Nijhoff Publishers 23, p. 9.

<sup>8</sup> See Hohfeld on the relationships of perfect and imperfect rights and duties, Hohfeld, W. N. (1964, 1st imprint 1919). *Fundamental legal conceptions*. New Haven, Yale University Press.

therefore proposing a variant of the 'interests theory'.<sup>9</sup> Regarding the question whether young people ought to be right bearers in their own capacity, able to take decisions about their lives, one has to consider, whether and how their needs differ from those of adults. Until recently the interests of parents and children were often assumed to be identical.<sup>10</sup> According to Eekelaar a conception of interests as benefits capable of being protected by rights, should only encompass those benefits a subject might plausibly claim for herself.<sup>11</sup> The next three sections give an overview of the 'interests' theory of rights based on the view that human beings have certain needs in common, followed by a discussion of the needs and interests of children as distinct from those of their parents.

#### 4.2. Human Needs

One might question why all human beings would have the same needs. It can be argued that needs are relative, being dependent on the individual's background and position in life. For instance, authors writing from a liberal point of view argue that only the individual herself has the potential of being the true judge of what she needs, which in consequence can only be expressed validly in terms of consumption.<sup>12</sup> The proposition that needs are to be considered objective and universal has also been refuted with the argument that they are 'socially relative' and can be interpreted only as preferences of specific cultural and ethnic groups. It has, for instance, been argued, that to determine what counts as harm for a person, requires identifying the aims and activities central to that person's way of life, 'his plan of life' in Miller's words. As

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<sup>9</sup> McCormick, N. (1982). 'Children's Rights: a Test Case for Theories of Right'. *Legal right and social democracy : essays in legal and political philosophy*. Oxford, Clarendon Press, pp. 154-184.

<sup>10</sup> Exemplified by a sentiment expressed as: "So long as the child is part of a viable family, his own interests are merged with those of other members," Goldstein, J., A. Freud, *et al.* (1980). *Before the best interests of the child*. London, Burnett Books/André Deutsch, titlepage.

<sup>11</sup> Eekelaar, J. (1986). 'The emergence of children's rights'. *Oxford Journal of Legal Studies*, vol. 6(2), p. 169.

<sup>12</sup> Gray, J. (1983). 'Classical liberalism, positional goals and the politicization of poverty.' *Dilemmas of liberal democracies : studies in Fred Hirsch's 'Social limits to growth'*. A. Ellis and K. Kumar, eds. p. 182.

people's ways of life differ according to their position, the needs to fulfil people's aims of necessity have to be different as well.<sup>13</sup> Similarly it has been claimed by feminists, that 'women have different views of reality' giving rise to different concerns.<sup>14</sup> Criticism has also been levelled at the universality and objectivity of human needs by authors writing from a Marxist point of view, who argued that people's conceptions of self differ, because their identities are shaped by the economic reality of their lives above all. In consequence their needs also differ.<sup>15</sup>

One of the main difficulties is caused by the fact that the term 'needs' is a word, whose meaning shifts chameleonlike. The word 'need' may assume the meaning of 'desire' as well as 'want', 'wish' or 'preference', but also of 'drive' in the sense of physically motivating force,<sup>16</sup> although it tends to be used mostly to indicate that something essential is lacking that prevents a human from reaching her fullest potential. For instance, a need has been defined as 'a necessary condition' essential for a living entity to flourish.<sup>17</sup> Although personal interests and desires might be dismissed as subjective and therefore non-universal, with such needs corresponding to particular conditions, several come close to being relevant to anyone in similar circumstances. When someone says "I need a drink," one might regard this less of a serious need, if the speaker referred to the intoxicating character of the beverage, and

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<sup>13</sup> Miller, D. (1976). *Social Justice*. Oxford, Clarendon Press, pp. 132-133.

<sup>14</sup> Stanley, L. and S. Wise (1983). *Breaking out : feminist consciousness and feminist research*. London, Routledge & Kegan Paul, pp. 18, 134; Habermas, J. (1996). *Between Facts and Norms*. Oxford, Polity Press, p. 420.

<sup>15</sup> Heller, A. (1976). *The theory of need in Marx*. London, Allison and Busby, pp. 96-97. Marx distinguished between 'natural wants' signifying 'physical needs' and 'necessary wants' that themselves would be shaped by 'historical development and therefore depend to a large extent on the degree of civilisation of a country', Marx, K. (1954). after the 4th 1890 edition. *Capital; a Critical Analysis of Capitalist Production*. (Translator, F. Engels) Moscow, Foreign Languages Publishing House, p. 171 and 'luxury needs' and 'social needs', that either have a social origin or can only be satisfied in association with others, Marx, K. (1976). Unpublished work 1845-1847, *Collected Works, Volume 5*. London, Moscow, Lawrence & Wishart, Progress Publishers, p. 432. Although the 'concept of need' was used in the formulation of other definitions, Marx did not define the concept of need itself, Heller, *The theory of need in Marx*, p. 23.

<sup>16</sup> See Maslow, A. H. (1943). 'A Theory of Human Motivation.' *Psychological Review*, vol. 50(4), p. 370.

<sup>17</sup> Lindley, R. (1986). *Autonomy*. Houndmills, MacMillan Education Ltd, p. 53.

rather more urgent, if she were dying of thirst. People speak of the need for a bigger car and the need for vengeance, but also of the need for warm clothing on a cold winter's day, the need for a kind word, the need for recognition and the need for knowledge. There appears to be a range of needs, with the need for a drink (of the alcoholic type) - and the need for vengeance exemplifying wholly subjective personal desires linked to specific occasions, while the other examples are instances of more universal objective needs. Yet certain personal wants may assume the character of basic necessary needs, because of their social significance: a person is set apart, when unable to participate in activities regarded as normal in her society because of unfulfilled needs. The satisfaction of needs as a precondition for social justice has been cited by authors such as Feinberg who posits the concept of 'need' as a basis for the distribution of material goods.<sup>18</sup> Similarly, when the question was asked why certain kinds of needing should deserve public consideration,<sup>19</sup> it was argued, that certain needs, such as the need for physical health and autonomy,<sup>20</sup> are so basic and entrenched, that an individual's life might be blighted, if left unfulfilled, whilst one could not even think of a substitute.<sup>21</sup>

#### **4.3. Needs into Rights**

If all human beings experience similar needs, is there any moral obligation by their fellow humans to alleviate these needs and to what extent? The claims that society has a duty to respond to unfulfilled needs is so strong that many people consider it self-evident. It has been argued, that the very existence of social life depends upon the recognition of duties towards others, which therefore calls on every

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<sup>18</sup> Feinberg, J. (1973). *Social Philosophy*. Englewood Cliffs, Prentice-Hall International, p. 111.

<sup>19</sup> Wiggins, D. (1985). 'Claims of Need'. *Morality and Objectivity*. T. Honderich. London, Routledge & Kegan Paul, p.174.

<sup>20</sup> "Since physical health and autonomy are the preconditions for any individual action in any culture, they constitute the most basic human needs," Doyal, L. and I. Gough (1991), *A theory of human need*, p.54.

<sup>21</sup> Wiggins, D. (1985). 'Claims of Need'. *Morality and Objectivity*. T. Honderich. London, Routledge & Kegan Paul, p. 158-159.

individual to be also a bearer of responsibilities.<sup>22</sup> The question is whether the reality of human needs necessarily establishes an entitlement to their fulfilment.<sup>23</sup> This entails consideration of the nature of the concept of a 'right'. The term is defined in *Collins English Dictionary* as: 'any claim, title, etc. that is morally just or legally granted as allowable or due to a person', and also as 'anything that accords with the principles of legal or moral justice'.

Feinberg proposes a mental exercise by imagining a world in which rights do not exist, but where every benevolence depends on inhabitants' sense of duty. The citizens of such a world would not be able to make demands against one another, even if badly treated. Without a notion of rights, they are unable to understand what might be their due. At this point the author calls attention to the conceptual link between personal rights and claiming: according to the doctrine of 'logical correlativity of rights and duties', a person's claim-rights entail duties by other people.<sup>24</sup> However, one needs more than benevolence and the moral right to lead an existence fit for human beings.<sup>25</sup> The crux is the element 'title' of the definition mentioned earlier, 'the evidence that establishes a claim as valid', which transforms a mere claim into a right. Although one should distinguish between what Feinberg has termed 'rights in a manifesto sense'<sup>26</sup> from 'claims recognised as genuine by some set of governing rules', both types need to be converted into positive and enforceable entitlements.<sup>27</sup>

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<sup>22</sup> Doyal, L. and I. Gough (1991). *A Theory of Human Need*, p. 92.

<sup>23</sup> 'The discovery of our needs does not help us to bridge the is-ought gap, to move from fact to value . . .', McCloskey, H.M. (1976). 'Human Needs, Rights and Political Values', *American Philosophical Quarterly*, vol. 13(1), January 1976, p. 2.

<sup>24</sup> Feinberg, J. (1970). 'The nature and value of rights.' *The Journal of Value Inquiry* (4), pp. 249-250.

<sup>25</sup> A perspective of 'fundamental obligations' on the part of adults towards children, who are not in a position to claim rights, as postulated by O'Neill, O. (1992). 'Children's Rights and Children's Lives'. *Children's rights: a re-appraisal in the light of the United Nations Convention on the Rights of the Child in International Journal of Law and the Family*, 6(1) P. Alston, S. Parker and J. Seymour, eds. Oxford, Oxford University Press, pp. 28-29, still depends on benevolence, see Section 4.7.

<sup>26</sup> Defined as 'claims not yet qualified as claims against someone', Feinberg, J. (1970). 'The nature and value of rights', p. 265.

<sup>27</sup> Feinberg, J. (1970). 'The nature and value of rights', pp. 243, 249-255, 257. In time the term 'rights' became redefined as 'claim-rights,' capable of conferring dignity and respect



#### 4.4. Universality of Human Rights

The belief that moral rights ought to be considered universal found expression in the 1948 United Nations *Universal Declaration of Human Rights*. According to the *Preamble* human beings inherently possess rights by virtue of being part of the human race, which are universal, in phrases such as:

*'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family'.*

In addition, the *Preamble* speaks of the pledge by Member States to promote 'universal respect for and observance of the standards introduced by the *Declaration*'.<sup>28</sup> The idea of universality of human rights has on occasion been denied on the grounds that Western nations dominated the drafting process. The allegation is put into perspective by the fact that distinguished jurists from the Third World took part, while the first two binding conventions<sup>29</sup> were adopted when nations in transition formed a majority in the General Assembly.<sup>30</sup> Other authors, such as Palley, take the stance that universality of standards depends both on the arguments of social philosophers and apologists of the human rights discourse, and ultimately on the purport of International Conventions.<sup>31</sup>

#### 4.5. The Needs of Children

Successful interaction with other human beings is dependent on the satisfaction of certain basic needs. It has been argued that personal physical health and autonomy are the minimum<sup>32</sup> preconditions allowing such interaction.<sup>33</sup> These depend on their

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upon a claimant, who is a holder of such rights both in the eyes of others as well as herself  
Feinberg, J. (1973). *Social Philosophy*, p. 59.

<sup>28</sup> Palley, C. (1991). *The United Kingdom and Human Rights*. London, Stevens & Sons, pp. 51-52.

<sup>29</sup> The *International Covenant on Economic, Social and Cultural Rights* 1966 (ICESCR), and the *International Covenant on Civil and Political Rights* 1966 (ICCPR).

<sup>30</sup> Tomuschat, C. (1985). 'International Standards and Cultural Diversity.' *Bulletin of Human Rights, Special Issue*, p. 46.

<sup>31</sup> Palley, C. (1991). *The United Kingdom and Human Rights*, pp. 10-13.

<sup>32</sup> Doyal, L. and I. Gough (1991). *A theory of human need*. Basingstoke, Macmillan Education Ltd, p. 78.

turn on the satisfaction of certain 'intermediate needs'.<sup>34</sup> If one accepts this proposition, it follows, that someone growing up without the satisfaction of her material, educational and emotional needs,<sup>35</sup> would be unable to reach that stage. The inference is that children and young people, even more than adults, require physical and emotional security, significant primary relationships and education to further their development as autonomous individuals. Whilst welfare interests, such as love and security are readily acknowledged as due to children, autonomy has long been the prerogative of adults. As the need for autonomy is regarded as more fundamental than intermediate needs as education and/or significant primary relationships, one might ask, whether a young person could or should exercise her growing autonomy by leaving education in connection with in her eyes a more pressing need, for instance, the care for a disabled parent.<sup>36</sup> However, the example is misleading: the young person concerned is not free to choose between different needs, she also has responsibilities towards her parent<sup>37</sup> – how could she allow her parent to suffer without diminishing her sense of self? There is no choice, when decisions are dictated by necessity, in this case, because society lets her down by neglecting to create the conditions in which both parent and child are able to exercise their autonomy. In another scenario, the exercise of autonomy may be more to the point. A young person might want to drop out of school at age fourteen to engage in paid work against the wishes of her parents, due to her dissatisfaction with an academic-oriented education, which might well prove harmful to her. Here one should think of McCloskey's definition

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<sup>33</sup> Doyal, L. and I. Gough (1991), *A theory of human need*. Basingstoke, Macmillan Education Ltd, pp. 50, 54, 59-73.

<sup>34</sup> Referring to Sen's framework of 'universal satisfier characteristics', i.e. those properties of goods, services, activities and relationships which enhance physical health and human autonomy in all cultures (Sen, A. (1987). *The Standard of Living: the Tanner Lectures*, ed. G. Hawthorn, Cambridge University Press) mentioned in Doyal, L. and I. Gough (1991). *A theory of human need*, pp. 157-168.

<sup>35</sup> Doyal, L. and I. Gough (1991). *A theory of human need*, pp. 204-216.

<sup>36</sup> See Chapter 2, footnote 55.

<sup>37</sup> "The various rights and duties of husband and wife, child and parent [...] arise not mutually from each other, but jointly from the common system in which all participate.", White, A. R.

of 'harm' as 'that which is detrimental to our natural development as individual persons as well as to us as we are now'.<sup>38</sup> In such a case, an affluent State could play a mediating role by offering some kind of alternative work-oriented education to young people in their early teens, thereby making partial or replacement education more relevant and attractive to all concerned parties.

Although the child's immediate interests appear to be the more urgent, one should not separate current interests from the ones a child will have as a future adult. Eekelaar therefore introduces the concept of 'developmental' interest, which needs safeguarding to promote the full development of a child's capacities.<sup>39</sup> Advocates of children's rights such as Holt have argued in favour of the same legal rights for children as adults,<sup>40</sup> whilst de Langen<sup>41</sup> advocated a gradual transition from a position of protection to one of full autonomy. Such a course of action would allow young people the freedom to make their own choices as well as accept responsibility for their actions.<sup>42</sup> However, such autonomy interests might well be at variance both with a child's developmental interests and their welfare interests and should in case of conflict be subordinated to these more urgent interests.<sup>43</sup> As children develop into near-adults, their needs not so much change as acquire a different emphasis: whilst the needs of infants can be expressed as 'welfare and protection interests', adolescents experience a greater need for autonomy.

By the late twentieth century the physical needs of children in the developed world are met to some extent through public provision, although even in affluent

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(1984). *Rights*. Oxford, Clarendon, p. 70. See also the argument concerning an individual as a bearer of responsibilities, this Chapter, footnote 22.

<sup>38</sup> McCloskey, H.M. 'Human Needs, Rights and Political Values', *American Philosophical Quarterly*, vol. 13(1), January 1976, p. 6.

<sup>39</sup> Eekelaar, J. (1986). 'The emergence of children's rights', p. 170.

<sup>40</sup> Holt, J. (1975). *Escape from Childhood*. 1974, 1st imprint, Harmondsworth, Penguin, p. 143.

<sup>41</sup> Professor of Youth Law at Amsterdam from 1976 to 1992.

<sup>42</sup> de Langen, M. (1973). *Recht voor jeugdigen: onderzoek naar rechten en rechtsbeginselen in het jeugdrecht* (Youth-centered law. Study of rights and legal principles in juvenile law). Alphen aan den Rijn, Samsom, p. 141.

<sup>43</sup> Eekelaar, J. (1986). 'The emergence of children's rights.' p. 171.

countries significant groups live below the official poverty line,<sup>44</sup> may be homeless and suffer the effects of inadequate nutrition.<sup>45</sup> Research into the effects of poverty suggests that minimal provision is inadequate, as children are set apart by being unable to take part in activities, which their peers take for granted.<sup>46</sup>

A person needs the ability to make informed choices in order to live a life that allows for the full gamut of social interactions. The capacity to interact fruitfully with other people requires a sense of belonging that is related to their treatment in early childhood. It also relies on a realistic knowledge of the wider world as well as our immediate surroundings. In Feinberg's words:

*'to have hardly any knowledge of the world is to be handicapped  
so severely as to be harmed, though perhaps not as severely as  
to have imposed on one a systematic set of falsehoods'.<sup>47</sup>*

According to one of the original drafters of the *CRC* it is also crucial to uphold the human dignity of each child as well as the need for the protection of her personality, for integrity and privacy, while keeping in mind that every young person has her own specific interests.<sup>48</sup> Additionally it presupposes a degree of independence of thought: instead of unquestioningly following someone else's directions, a person should be able to decide for herself, whether requests are reasonable and on which grounds. While the need for a stable relationship and sense of belonging essential for a young person's development depend in early childhood on the attitude of the adults in

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<sup>44</sup> The definition varies across countries. In the U.S. this is a percentage of the median income for a family of a certain size, e.g. in 1988 the poverty line was approximately 43% of the median income of all families, Danziger, S. and J. Stern (1990). *The Causes and Consequences of Child Poverty in the United States*. Florence, UNICEF / International Child Development Center, p. 3.

<sup>45</sup> Danziger, S. and J. Stern (1990). *The Causes and Consequences of Child Poverty in the United States*; Herr, S. (1990-1991). 'Children without homes: Rights to Education and to Family Stability.' *U. Miami Law Review* (45), p. 337. 1990 estimate of between 280,000 and 750,000 homeless school-age children in the U.S.

<sup>46</sup> van Nistelrooij, R. (1998). *Dan had mijn moeder een som in haar hoofd*. Utrecht, katholiek centrum Welzijnsbehartiging Oost-brabant, pp. 87-89.

<sup>47</sup> Feinberg, J. (1973). *Social Philosophy*, p. 30.

<sup>48</sup> Lopatka, A. (1992). 'The Rights of the Child are Universal: the Perspective of the UN Convention on the Rights of the Child'; *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman. Dordrecht, Martinus Nijhoff Publishers 23. pp. 47-49.

a child's immediate surroundings,<sup>49</sup> the approval of peers becomes increasingly important in adolescence.<sup>50</sup> According to the psychological literature, friends play a crucial role in the development of children and adolescents, which is 'especially true in age-segregated technologically based societies like our own, in which entry into the adult world of work and family responsibility is increasingly delayed. Young people may feel excluded from the peer group if they do not wear the same style of clothes or are unable to engage in the same activities'.<sup>51</sup>

The difficulty lies in deciding whether there is a specific age at which a child is capable of taking independent decisions without taking her cue from others. While it has been asserted that 'Each human being has his or her own autonomy and personality' treating its validity as a given in relation to children of all ages as well as adults,<sup>52</sup> one might question whether the concept of autonomy is applicable to infants at all. According to Lindley, a human being is not capable of exercising autonomy until she becomes 'a person', someone with conception of self, able to express a wish about her intentions. Such a person 'has to be able to think of himself as a being with a future and a past, a subject of experiences, a possessor of beliefs and desires'.<sup>53</sup> While some children may be capable of seeing themselves in this light at an early age, many young people may not reach that stage until later.<sup>54</sup> As development of an individual's personality is a gradual process, there is no sharp dividing line between a stage, at which a child is unable to contribute to her future and one at which she

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<sup>49</sup> Pringle, M. K. (1986). *The needs of children*. London, Routledge, p. 34; Doyal and Gough, *A theory of human need*, p. 37.

<sup>50</sup> Pringle, M. K. (1986). *The needs of children*, p. 54.

<sup>51</sup> Mussen, P. H., J. J. Conger, et al. (1990). *Child development & personality*. New York, Harper Collins, pp. 601-602.

<sup>52</sup> Lopatka, A. (1992). 'The Rights of the Child are Universal: the Perspective of the UN Convention on the Rights of the Child', p. 47.

<sup>53</sup> Lindley, R. (1986). *Autonomy*, pp. 122-123.

<sup>54</sup> Lindley, R. (1986). *Autonomy*, p. 123; Freeman, M. D. A. (1992b). 'Taking Children's Rights more seriously'. *Children, Rights and the Law*. P. Alston, S. Parker and J. Seymour. Oxford, Oxford University Press, p. 65.

becomes a fully autonomous person capable of being responsible for her life plan.<sup>55</sup> Therefore Feinberg puts forward the notion of 'rights-in-trust,' where the autonomy which the child is not yet capable of exercising, is to be safeguarded for her future. Respect for her future autonomy as an adult therefore may require preventing her free choice in the present.<sup>56</sup> If conflicts arise between the supervisory interests of parents and those of their children (with a possible involvement of the general community) it is up to the State to intervene in its role of *parens patriae* and uphold the children's rights-in-trust.<sup>57</sup>

Traditionally under-age children were denied the opportunity to take decisions on their own account, because as minors they were not supposed to function apart from their family, being as it were the property of their parents. Such a conception of the parent-child relation leaves children 'at the mercy of parents who are not prepared to facilitate a child's growth towards self-determination'.<sup>58</sup> It has also been argued that self-determination is too important to be left to children, leading to what has been called the 'caretaker thesis,' whereby parents or other responsible adults take decisions for dependent children, until they reach a maturity sufficient enabling them to make their own choices. Such an arrangement is based on the premise that children are irrational creatures who 'have not yet developed the cognitive capacity to make intelligent decisions in the light of relevant information about themselves' and who are 'prone to emotional inconstancy'.<sup>59</sup> In between attitudes, which deny young people all autonomy, and the liberationist position, which argues for total freedom for children,

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<sup>55</sup> Feinberg, J. (1980, 1992 reprint). 'The child's right to an open future.' *Freedom and fulfillment: philosophical essays*. Princeton, Princeton University Press p. 95.

<sup>56</sup> Feinberg, J. (1980, 1992 reprint) 'The child's right to an open future', pp. 76-78.

<sup>57</sup> Feinberg, J. (1980, 1992 reprint) 'The child's right to an open future', p. 79.

<sup>58</sup> Montgomery, J. (1988). 'Children as Property.' *M.L.R.* vol. 51, p. 324. See also Archard on the issue, whether children may be considered 'self-owning', Archard, D. (1993a). 'Do parents own their children?' *The International Journal of Children's Rights*, vol. 1, p. 301. Yet children were able to live independently from their families before child work became illegal, e.g. child factory workers Robinson, H. H. (1976). reprint from 1895 edition. *Loom and spindle, or, Life among the early mill girls*. Kailua, Hawaii, Press Pacifica, p. 40.

<sup>59</sup> Archard, D. (1993b). *Children: rights and childhood*. London; New York, Routledge, pp. 51-57.

lies the view that parents have to act as trustees for their children, until they are able to take decisions independently.<sup>60</sup> This position also takes into account that young people's decisions, especially when in their teens, are likely to be influenced by the views of other teenagers because of the pressure of peer group culture, which makes them particularly vulnerable. If decisions that go against the grain of the majority opinion, are taken for them, young people are relieved from the charge of behaving contrary to established group customs. The argument that children should not only be able to possess certain rights, but also allowed to exercise them, is contingent on their competence to exercise such rights.<sup>61</sup> Whilst charges of irrationality may be arbitrary and unfounded, it takes experience to fully understand the implications of one's actions. Although children may have the required understanding to comprehend the consequences of their actions at an early age, they may still lack the necessary emotional maturity needed to take considered decisions. Both are needed to be able to exercise full autonomy.<sup>62</sup>

To recapitulate: in order to become autonomous, persons need to be able to develop to their fullest potential. Children do not only need physical and emotional security and opportunities for play and intellectual development, but also the opportunity to participate in the life of the community, the freedom to assume increasingly more demanding responsibilities and the exercise of a certain degree of autonomy. The next Chapter discusses to what extent provisions of international and regional conventions adopted during the second half of the twentieth century respond to such needs.

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<sup>60</sup> Freeman, M. D. A. (1992). 'The Limits of Children's Rights'. *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman. Dordrecht, Martinus Nijhoff Publishers 23, p. 38.

<sup>61</sup> Archard, D. (1993b). *Children: rights and childhood*, p. 65.

<sup>62</sup> Eekelaar, J. (1986). 'The emergence of children's rights', p. 181.

#### 4.6. The Importance of Children's Rights

The argument in favour of special treatment for children is based on two main lines of reasoning. First the welfarist argument that children are weaker and unable to fend for themselves which has long dominated the attitude towards young people. The other, possibly more important justification for the adoption of treaties empowering children is in essence the same as for general human rights instruments. The ability to claim rights confers a sense of self-respect and dignity on an individual. Someone able to exercise rights does not have to live a life of perpetual gratitude. This may be expressed as follows:

*There must be a profound distinction between a social order which acts under the normative directive that the community must enhance the welfare of its members [ . . . ] and one which regards each of its members as potential makers of claims.*<sup>63</sup>

The suggestion that children should be accorded special status allowing them to claim rights of their own, was not taken seriously until the late twentieth century.<sup>64</sup> The argument in favour of a special convention consolidating the rights of young people under eighteen is based not so much on the distinctiveness of their needs, as on the recognition that their position has long been ambiguous. Children have tended either to be considered of no account, creatures to be 'seen but not heard', or beings for whom nothing was too good. Neither treatment accords them the full value of persons.

As indicated earlier, to become autonomous, a person needs to be able to exercise a certain degree of autonomy, while increasingly assuming further responsibilities during her formative years. Although this might create the impression, that endowing children with rights is primarily a matter of ensuring their future as autonomous adults, regarding them as holders of rights in the present is important in

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<sup>63</sup> Eekelaar, J. (1992). 'The importance of thinking that children have rights'. *Children's rights: a re-appraisal in the light of the United Nations Convention on the Rights of the Child in International Journal of Law and the Family*, 6(1), P. Alston, et al., eds. Oxford, Oxford University Press, pp. 151-152.

<sup>64</sup> See footnote 3, above.



itself for their sense of self-respect, whether they are very young or near-adults. Legal decisions constructing children as having the capacity to take their own decisions,<sup>65</sup> have at the same time given children the right to make their own mistakes.<sup>66</sup> Since the adoption of the *CRC* even a new-born baby unable to express herself other than by cries and tears, can no longer be regarded as an 'object' of little importance, but ought to be seen as a person in her own right. If children are to receive at least part of what society proclaims as their due,<sup>67</sup> their status of right-holders puts them in a stronger position in relation to authority.

#### 4.7. Opposition to the notion of children as right-holders

The proposal to designate children as beneficiaries of a binding Convention gave rise to a great deal of controversy. Whilst the idea of children's rights has in some instances been rejected altogether, it has also been suggested that it might be preferable to rely on a perspective of obligations as a basis for effective rights for children. Objections first of all concerned the conception of rights as based on the ability to make choices. The proposition that children ought to possess rights of their own faces rejection, both on philosophical grounds, namely that children lack the capacity to exercise rights independently,<sup>68</sup> and also because the idea goes counter to the deep-rooted belief in prior claims of 'parental rights' and the 'rights of the family'.

Opposition to the idea of children as independent bearers of rights is largely based on the view, that parents are in the best position to take decisions on behalf of children lacking the competence to do so themselves. One also has to take account of feelings of ownership on the part of parents, who may see their offspring as extensions

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<sup>65</sup> e.g. *Gillick v West Norfolk and Wisbech AHA* [1985] 3 WLR 830 (HL).

<sup>66</sup> Eekelaar, J. (1986). 'The emergence of children's rights', p. 182. Foreshadowed by 'the right to make mistakes', one of the principal rights due to children according to Korczak, Joseph, S., Ed. (1999). *A voice for the child; The inspirational words of Janusz Korczak*. London, Thorsons, HarperCollins Publishers, p. 179, see Chapter 5, footnotes 11-12.

<sup>67</sup> Expressed as "Whereas mankind owes to the child the best it has to give" in the 1959 *Declaration of Children's Rights*.

<sup>68</sup> See MacCormick's argument rejecting the proposition that an individual's rights depend on the capacity to waive or enforce her rights, discussed in Section 4.1.

of themselves by virtue of the act of procreation.<sup>69</sup> In a worst-case scenario this can lead to a child being treated as a commodity, a plaything for the use of her begetter. Even without such connotations there may be a tendency to consider a child as no more than an adjunct to the family.

Where social welfare provisions are in place, society provides a safety net in cases, where parents and others responsible for the welfare of minors are unable to provide the care and support needed for the development of children into responsible adults. In practice, society may turn a blind eye, even where situations are unsatisfactory. The belief that the privacy of family life defines a sacrosanct domain,<sup>70</sup> separated from the stresses of daily life, is so strong, that friends and neighbours are reluctant to interfere in anything falling within the family sphere, unless signs of abuse are too blatant to be ignored.

It has been suggested that a model in which children's positive rights derive from the fundamental obligations of adults might be politically more acceptable, while it would offer theoretical advantages. O'Neill argued that a *constructivist*<sup>71</sup> perspective of obligations would provide a more complete view of the ethical aspects of children's lives, including those areas that depend on imperfect obligations.<sup>72</sup> An example might be 'the obligation to be kind and considerate to all children', independent from the right to expect considerate treatment owing to a special relationship with specific adults, thereby removing it from the scope of enforceable rights.<sup>73</sup> This argument sounds somewhat less than convincing, as one may as well specify 'a right to expect

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<sup>69</sup> Archard, D. (1993a). 'Do parents own their children?', p. 293.

<sup>70</sup> The expression "private realm of family life which the state cannot enter," used e.g. in *Prince v. Massachusetts*, 3210 U.S. 158, 166 (1944).

<sup>71</sup> Constructivism has been described as 'the doctrine that what would be agreed on in some specific kind of situation constitutes justice'. Barry, B. (1989). *A treatise on social justice*. - Vol. 1 : *Theories of justice*. London, Harvester Wheatsheaf, p. 288.

<sup>72</sup> An 'imperfect' obligation is one where the relationship between two people does not impose a duty on the person at the giving end to behave in a specific way to the other person, Hohfeld, W. N. (1964, 1<sup>st</sup> imprint 1919). *Fundamental legal conceptions*.

<sup>73</sup> O'Neill, O. (1992). 'Children's Rights and Children's Lives'. p. 26.

involvement or kindness from others' as oblige them to behave in such a way.<sup>74</sup> In addition, the starting point of a paternalistic approach, as advocated by O'Neill, is not only, that it presupposes a 'supportive environment',<sup>75</sup> but also that the views of children are not necessarily taken into account.

A further reservation concerns the notion of treating children as right holders without demanding corresponding duties in return. The argument is that encouraging young people to think they would only need to assert their rights to see their every wish fulfilled burdens society with antisocial citizens. However, this particular objection may be refuted with the argument that human rights treaties in general rarely confer duties that correspond directly to specific rights.<sup>76</sup> The *Universal Declaration* clearly asserts, that granting rights ought not to be regarded as a one-sided process in Art. 29(1), 'everyone has duties to the community'. In addition, concerns have been expressed about a class of right holders unable to exercise their rights independently.

If one regards human rights as deriving from one's membership of the human community, the argument holds, that claims of right are made against the whole of humanity. This tacitly assumes, that every human is under an obligation to fulfil claims made by other humans. As this is not practicable, the duty of guaranteeing rights has been entrusted to the States Parties who ratified the instruments, and who depend on their citizens for the means to do so. This implies fulfilment of duties of citizenship, including payment of taxes, directed towards the maintenance of an ordered society. Although children seldom pay tax, as any earnings they may have are generally too low to be assessed,<sup>77</sup> they are not exempt from the duties of citizenship, whilst

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<sup>74</sup> Coady, C. A. J. (1992). 'Theory, Rights and Children: a Comment on O'Neill and Campbell'. *Children, Rights and the Law*. P. Alston, et al., eds. Oxford, Oxford University Press, p. 46.

<sup>75</sup> Olsen, F. (1992). 'Children's Rights: some Feminist Approaches to the United Nations Convention on the Rights of the Child'. *Children, Rights and the Law*. P. Alston, S. Parker and J. Seymour. Oxford, Oxford University Press. pp. 205-207.

<sup>76</sup> See footnote 57 above.

<sup>77</sup> Taxes are levied on the earnings of children in, e.g. Denmark, Frederiksen, L. (1999). 'Child and Youth Employment in Denmark; Comments on Children's Work from their own

accorded few of the benefits. For instance, they need to learn how to become responsible citizens capable of respecting other people's rights. The promotion of responsible citizenship through education features as one of the most important objectives of the right to education in every Convention granting this right.<sup>78</sup> A recurrent theme is the emphasis on the need for primary education to be both compulsory and free: the compulsory character of the right makes clear that it is as much a duty<sup>79</sup> as a right to attend school - at least in connection with children of school age.

As regards the objection, that children as minors may not be in a position to assert their rights, practical solutions may be found by creating legal structures to assist them in this task. Although it is often assumed, that the exercise of a child's right is an obligation devolving on parents, this does not deal with the argument, that an important objective of making children into right-holders is precisely to provide protection from abuse by adults, including parents.

#### **4.8. Universality of children's rights**

In spite of misgivings such as the ones outlined in the previous section, the *CRC* has by the twenty-first century been ratified by virtually all UN Member States. Accordingly the Convention constitutes a form of positive law to be incorporated into domestic legislation, thereby turning claims into entitlements.

A major innovation of the *CRC* is the recognition of the fact, that protection alone does not satisfy the various needs and concerns of children, whether as developing

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Perspective.' *Childhood - a Global Journal of Child Research* vol. 6(1), p. 103 and the Netherlands, <http://home.fnv.nl/bijbaan/content/rechten.html>, p. 2.

<sup>78</sup> According to the *ICESCR*, Art. 13(1), one of the aims is 'to enable all persons to participate effectively in a free society'; in the *CRC*, Art. 29(1)(c), education is to be directed towards 'the national values of the country in which the child is living', and in the *African Charter on the Rights and Welfare of the Child* 1990, Art. 11(2)(d) towards 'the preparation of the child for responsible life in a free society.'

<sup>79</sup> According to the *ICESCR*, Art. 10(1), the responsibility for the education of dependent children rests with the family, whilst the *CRC* urges State Parties to create structures facilitating the right.

persons, future citizens or as persons in their own right.<sup>80</sup> The Convention encompasses the entire range of rights, civil and political as well as economic, social and cultural in forty-one substantive articles which for simplicity's sake tend to be grouped into three broad categories, sometimes designated the 'three P's',<sup>81</sup> signifying 'Protection, Provision and Participation'. In addition, State Parties are enjoined to interpret their submissions to the Committee in the light of four articles representing the general principles underlying the CRC's purport, namely: Arts. 2 'Non-discrimination',<sup>82</sup> 3, 'Best interests of the child',<sup>83</sup> 6, 'The right to life, survival and development'<sup>84</sup> and 12, Respect for the views of the child.<sup>85</sup>

The proposition, that human rights are universal, serves as an endorsement of the universality of the rights of children. This was considered self-evident by one of the original drafters of the CRC, who regarded its adoption by the majority of members of the UN as a reaffirmation of this universality.<sup>86</sup> Yet the CRC has according to Alston on occasion been charged with being a 'uni-dimensional document reflecting a single, unified philosophy of children's rights' as well as euro-centric, a simplistic view, which belies the *Convention's* complex character.<sup>87</sup> Whilst cultural considerations play an important role in the implementation of the rights embodied in the CRC, it has been

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<sup>80</sup> Campbell, T. (1992). 'The rights of the minor: as person, as child, as juvenile, as future adult'. *Children's rights: a re-appraisal in the light of the United Nations Convention on the Rights of the Child in International Journal of Law and the Family*, 6(1). P. Alston, et al. eds. Oxford, Oxford University Press, pp. 1-3.

<sup>81</sup> An expression coined by Hammarberg, T. (1990). 'The U.N. Convention on the Rights of the Child and How to Make It Work.' *Human Rights Quarterly* (12), p. 100.

<sup>82</sup> States Parties shall respect and ensure the rights [ . ] to each child within their jurisdiction without any discrimination, Art. 2(1).

<sup>83</sup> In all actions concerning children [ . ] the best interests of the child shall be a primary consideration Art. 3(1).

<sup>84</sup> States Parties recognize that every child has the inherent right to life, Art. 6(1).

<sup>85</sup> Art. 12(1), 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child', Committee on the Rights of the Child (1991). *General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1(a), of the Convention*; CRC/C/5, Geneva, § 13.

<sup>86</sup> Lopatka, A. (1992). 'The Rights of the Child are Universal: the Perspective of the UN Convention on the Rights of the Child', pp. 47, 50.

<sup>87</sup> Alston, P. (1994a). 'The best interests principle: towards a reconciliation of culture and human rights.' *International Journal of Law and the Family*, 8 (1) Apr 94, pp. 2-3.

argued that Art.3(1) in particular<sup>88</sup> can act as a mediating principle, when different rights are in conflict with one another.

#### 4.9. The Convention on the Rights of the Child and the eradication of child labour

Although the implementation of the CRC lies with individual states, the significance of provisions, such as the non-discrimination principle of Art. 2, 'State Parties shall 'respect and ensure the rights [ . . . ] to each child 'within their jurisdiction without any discrimination,'<sup>89</sup> is that the rights of children are of an importance, which transcends the confines of the nation state. If the justification of the universal character of human rights implies, that the human population is collectively responsible for the future of the world's young people,<sup>90</sup> to what extent does that devolve in concrete terms on individuals? Although children's rights organisations endorse the principle of horizontal universality through worldwide programmes, the obligation of States Parties to take measures towards the promotion of 'economic, social and cultural rights' leaves something to be desired, in particular in connection with commitments 'within the framework of international co-operation'.<sup>91</sup>

Even before the adoption of the CRC, a paper by Alston called attention to its significance in providing an integrated framework at the international level for the promotion of children's rights.<sup>92</sup> Universal adoption of the CRC would encourage the

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<sup>88</sup> The importance of Art. 3 is underlined by the fact, that it is included both in the articles designated by the Committee as guiding principles for the interpretation by State Parties and the first five articles of the CRC regarded as providing an overall framework for the CRC, Alston, P. (1994a). 'The best interests principle: towards a reconciliation of culture and human rights.' *International Journal of Law and the Family*, vol. 8(1), pp. 1-25. The same applies to Art. 2.

<sup>89</sup> See footnote 57 above.

<sup>90</sup> CRC, Arts. 2(1) and 4. In this respect Verhellen stresses the horizontal effect (or third-party effect) of the CRC, Verhellen, E. (1998). 'Children's rights: Education and academic responsibilities'. *Challenging Mentalities; Implementing the United Nations Convention on the Rights of the Child / Défier les Mentalités; La mise en œuvre de la Convention de Nations Unies relative aux droits de l'enfant*. P. D. Jaffé. Ghent, Children's Rights Centre, University of Ghent. p. 117.

<sup>91</sup> CRC, Art. 4.

<sup>92</sup> Alston, P. (1989). 'Implementing Children's Rights: The Case of Child Labour.' *Nordic Journal of International Law*, vol. 58(1), p. 47.

international community to pay more attention to the abolition of the economic exploitation of children, defined as: "work that exploits the child as a cheap substitute for adult labour, work that uses the child's effort but does nothing for his development."<sup>93</sup> Concerned in particular with the eradication of child labour in the Developing World, the paper specifies priority areas for action for the international community and the intergovernmental organisations, such as the identification and elimination of work of a dangerous or hazardous nature.<sup>94</sup> One may ask whether the near universal acceptance of the *CRC* has made any appreciable difference to the reality of children's lives. Therefore one of the aims of the next chapter is to put the exultation over the effortless inauguration of the *CRC* into perspective.

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<sup>93</sup> ILO (1983). *ILO Director-General's Report*. Geneva, ILO, p. 37.

<sup>94</sup> Alston, P. (1989). 'Implementing Children's Rights: The Case of Child Labour,' p. 44.

## 5. Content and Scope of International Legal Instruments relating to Children

### 5.1. Introduction

Many children spend much of their time working as well as attending school, with little time left for leisure pursuits. Yet play and recreation are essential to a young person's development.<sup>1</sup> It has long been customary in Western societies 'to think in terms of a binary distinction between work, a serious activity by adults, and play as a non-serious activity particular to children',<sup>2</sup> with 'education' regarded as constituting 'children's real work'.<sup>3</sup> However, there are no firm boundaries between work, education and leisure. According to Holt: 'When we talk about children and work, one difficulty we have is saying what we mean by work and how it differs from play. Some say that work is what has a serious purpose'.<sup>4</sup> Activities categorised as 'employment' may be perceived as liberating and stimulating as those considered educational or recreational, whilst pursuits regarded as leisure interests, such as participation in beauty contests and, on occasion, competitive sports,<sup>5</sup> are more akin to exploitation and drudgery. The relationships are displayed in graphical form at different positions inside a 'triangle of activities' on the next page.

Certain activities are part economic, part leisure occupation, others part leisure activity, part educational. Whilst these are all pursuits in which young people in the developed world may engage, the selection of activities depicted is arbitrary. The

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<sup>1</sup> Hart, R. and A. Petrén (2000). 'The Right to Play'. *Children's Rights: Turning Principles into Practice*. A. Petrén and J. Himes. Stockholm, Save the Children Sweden, p. 110.

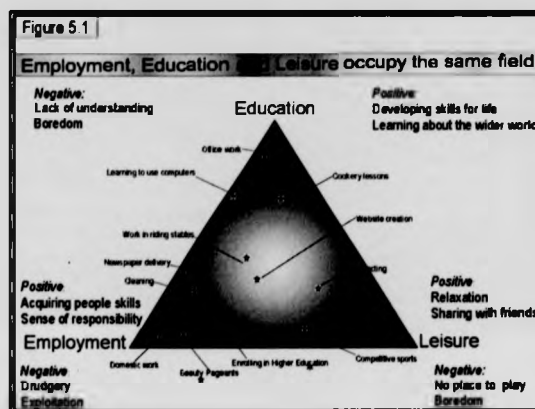
<sup>2</sup> James, A., C. Jenks, et al. (1998). *Theorizing Childhood*. Cambridge, Polity Press, p. 90.

<sup>3</sup> 'The most important job for our young people, who represent the future of our nation, is to get an education', Lantos, T. (1992). 'The Silence of the Kids: Children at Risk in the Workplace'. *Labor Law Journal*, vol. 43(2), p. 67, see also Qvortrup, J. (2001). 'School-work, paid work and the changing obligations of childhood'. *Hidden Hands: International perspectives on children's work and labour*. P. Mizen, C. Pole and A. Bolton. London, RoutledgeFalmer, pp. 100-103.

<sup>4</sup> Holt, J. (1975). *Escape from Childhood*. Harmondsworth, Penguin, p. 134.



nearer the centre, the more mixed in character the activities. Those positioned nearer the edge, can be categorised more clearly as 'employment', 'leisure' or 'educational activities'.



This Chapter examines the international instruments aiming at the regulation of these areas of activity of young people, reflecting to what extent the linkage between these pursuits has been acknowledged. The first section presents a historical overview of declarations and conventions concerned with the well-being of young people engaged in economic pursuits, followed by a discussion of the relevant articles. The chapter ends with the evaluation of the impact of the ratification of Instruments pertinent to the thesis on the three states in the comparison.

## 5.2. Children's rights prior to the ILO Minimum Age Convention and the CRC

### 5.2.1. The nineteenth century

Although the issue of children's rights did not find a place on the international agenda until the late twentieth century, earlier voices, both in the U.S. and Europe, suggested, that children ought to have a right to special protection because of their

<sup>5</sup> David, P. (1993). 'Children and sport: Accomplishment or exploitation'? *International Children's Rights Monitor*, vol. 10(4), pp. 8-11; Donnelly, P. (1997). 'Applying child labour

vulnerable position. In the nineteenth century these 'rights' took the form of protection from exploitative work, denounced as 'slavery',<sup>6</sup> as well as the right to material support,<sup>7</sup> both at variance with the prevailing orthodoxy of minimal state interference in civil affairs. Welfare rights formed, however, not the only strand of the debate. As early as the mid-nineteenth century an American educationalist pleaded for the recognition of children as individuals in their own right instead of continuing to regard them as 'defenceless subjects', whose interests were completely ignored in matters, concerning them closely such as the regulation of their parents' divorce.<sup>8</sup> The author argued, that a child ought not to be treated as an adjunct to parents, "a mere gift to ourselves, for sport or profit." Instead a child should be regarded as "a double trust - a kinsman and guest,"<sup>9</sup> i.e. an individual to be treated with respect and courtesy as well as provided with material support.

#### 5.2.2. International Instruments concerned with children in the interwar period

Until the 1989 *Convention on the Rights of the Child* the only binding International Instruments relating to children and young persons emanated from the International Labour Organisation (ILO), one of the international organisations created at the 1919 Peace Conference at Versailles. The first ILO Convention relating to young

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laws to sport'. *International Review for the Sociology of Sport*, pp. 393-395.

<sup>6</sup> Used, for instance, by Coleridge, see Chapter 2, footnote 211. The term 'slavery' was also used in 1841 by Dutch head-teacher Lalleman for child labour in the rope-walks, Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*. Assen, van Gorcum, p. 51.

<sup>7</sup> van Houten, chairman of the Dutch Liberal Party and architect of the first Dutch child labour law, emphasised the duty of Governments to take responsibility for the care of destitute children as follows: "the child also has rights, and his first right is to be cared for and educated by his parents." [ . . . ] "When parents neglect their duty, it is a breach of the rights of the child," Tweede Kamer der Staten-Generaal (Vergaderjaar 1872-1873). 'Voorstel van wet van den heer v. Houten, strekkende om overmatigen arbeid en verwaarlozing van kinderen tegen te gaan, Bijlagen.' *BHTK*, blad 113, p. 1. Also, "The care for children, unable to act in their own capacity, self-evidently and according to all theories of right, falls under the competence of the government", Tweede Kamer der Staten-Generaal (Vergaderjaar 1873-1874). 'Memorie van toelichting.' *BHTK*, deel 2, blad 34.2, p. 8.

<sup>8</sup> Slogvolk, P. (1852). 'The Rights of Children.' *The Knickerbocker Monthly*, vol. XXXIX(6), pp. 487-488, 491.

<sup>9</sup> Slogvolk, P. (1852). 'The Rights of Children.' p. 488.

people, the *Minimum Age (Industry) Convention* 1919 dates from that same year. The ILO has adopted numerous labour Conventions during the course of the twentieth century, several of which apply specifically to young people under eighteen. The first ones were concerned with the regulation of one particular type of work, for instance, the *Minimum Age (Agriculture) Convention* 1921 and the *Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea* (Revised 1936), until consolidated in 1973 as the *Minimum Age Convention*.

In addition, several non-binding declarations have also been formulated in the inter-war period. Two declarations of rights for children, which presented contrasting viewpoints, date from 1923. The first, described as 'a Magna Charta' concerning the rights of the child, was developed by a Polish children's advocate, Janusz Korczak,<sup>10</sup> who regarded children as individuals worthy of respect. In addition to the usual 'right to education' rights included 'the right to be taken seriously' and 'the right of respect', both for the child as an individual and for his 'possessions and budget'.<sup>11</sup> That same year Eglantyne Jebb, founder of the 'International Save the Children Union'<sup>12</sup> formulated the *Declaration of the Rights of the Child*, comprising five principles for the protection and development of children. From a point of view of child labour *Principle 4* is the most important, combining protection from exploitation during childhood and empowerment for the child's future: 'The child must be put in a position to earn a livelihood, and [ . . ] protected against every form of exploitation'. Within the space of a year the *Declaration* was adopted by the League of Nations<sup>13</sup> as the 1924 Geneva *Declaration of the Rights of the Child*.

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<sup>10</sup> Physician and writer, who, as director of a Jewish orphanage in Warsaw, was to die in the extermination camps together with his charges, Gutman, I., Ed. (1990). *Encyclopedia of the Holocaust*. New York, Macmillan. pp. 816-818.

<sup>11</sup> Joseph, S., Ed. (1999). *A voice for the child; The inspirational words of Janusz Korczak*. London, Thorsons, HarperCollins Publishers, pp. 178-180.

<sup>12</sup> <http://www.savethechildren.org.uk/functions/aboutus/history3.html>. In 1948 the 1924 *Declaration*, enlarged to seven principles, was adopted by the General Assembly of the United Nations.

<sup>13</sup> Established in 1919 to promote international cooperation, in an attempt to prevent the recurrence of war, superseded in 1945 by the United Nations.

The *Declaration* was followed in 1930 by the U.S. *Children's Charter*,<sup>14</sup> drafted by that year's White House Conference on Child Health and Protection and signed by President Hoover, which established nineteen aims for the protection and development of children and was also couched in the language of rights. The *Charter* is the first Instrument, that mentions 'play' as important to child development, linking labour, education and play in one and the same Principle.<sup>15</sup> Although the Depression of the 1930s prevented the full implementation of the Charter, its importance for youth reform has been recognised in the 1973 *Youth Transition to Adulthood* report.<sup>16</sup>

### 5.3 General Human Rights Instruments applicable to child labour

#### 5.3.1. The International Bill of Rights

Soon after the Second World War, the General Assembly of the United Nations<sup>17</sup> adopted the *Universal Declaration of Human Rights (UDHR)*.<sup>18</sup> In contrast with the expression 'equal rights of men and women', used in the Preamble of the *Charter of the United Nations*,<sup>19</sup> the *UDHR* is directed at 'everyone',<sup>20</sup> which suggests that children are included. The *UDHR*, which has become the basis for the entire structure of human rights Conventions, has subsequently been reaffirmed in binding Instruments, in the form of two United Nations Covenants, and two regional Instruments, which are discussed below. The *UDHR* contains several articles that form the basis for the three interconnected rights which are the subject of the thesis. The first section of one of these articles, 'the right to education' applies to children, despite

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<sup>14</sup> Edmonds, B. C. and W. R. Fernekes (1996). *Children's rights: a reference handbook*. Santa Barbara, Oxford, ABC-CLIO, pp. 182-185.

<sup>15</sup> Principle xvi: 'The right of protection against labor that stunts growth, either physical or mental, that limits education, that deprives children of the right of comradeship, or play and of joy'.

<sup>16</sup> Report of the Panel on Youth of the President's Science Advisory Committee (1974). reprint of 1973 edition ed. *Youth Transition to Adulthood*. Chicago, University of Chicago Press, pp. 31-32.

<sup>17</sup> Established in 1945, under very similar circumstances as its predecessor, the League of Nations.

<sup>18</sup> Drafted by the Commission on Human Rights, established in 1946 under Art. 68 of the *Charter of the United Nations*, <http://www.unhchr.ch/html/menu2/2/ecosoc.htm>

<sup>19</sup> Preamble and Art. 8.

the fact that the third paragraph is addressed to parents.<sup>21</sup> In contrast, both 'the right to work'<sup>22</sup> and 'the right to rest and leisure'<sup>23</sup> have clearly been framed with regard to the position of male adults, expected to support a family and therefore entitled to respite from work.<sup>24</sup>

Although addressed to 'everyone', the third paragraph 'everyone who works' indicates, that 'everyone' does not include children, as children were not regarded as individuals, who might engage in work. However, logically following from Art. 2,<sup>25</sup> parts of these articles resurface in later Conventions in a form relevant to young people. In addition, the UDHR contains an article prohibiting slavery,<sup>26</sup> addressed earlier by the 1926 League of Nations *Slavery Convention*, which is in principle applicable to forced forms of child labour.<sup>27</sup>

It took the drafting Committee until 1966 to restate the UDHR in a binding form. As it proved difficult to achieve an Instrument, that would satisfy the aspirations of all participating nations, it was decided to formulate two Instruments covering the rights proclaimed by the UDHR. These are the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. This division of the principles of the UDHR allows States to ratify one Covenant, without becoming a State Party to the other. From the point of view of

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<sup>20</sup> Art. 2, 'Everyone is entitled to all the rights and freedoms set forth in this Declaration'.

<sup>21</sup> Art. 26, '(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. However, Art. 26(3) states: 'Parents have a prior right to choose the kind of education that shall be given to their children'.

<sup>22</sup> Art. 23(1), Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.  
(2) Everyone, without any discrimination, has the right to equal pay for equal work.  
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family.

<sup>23</sup> Art. 24, 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.'

<sup>24</sup> Art. 23(3) includes the phrase: 'ensuring for himself and his family.'

<sup>25</sup> 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind . . .'

<sup>26</sup> Art. 4, 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'.

<sup>27</sup> Amended by a UN Protocol in 1947, see Table of International Instruments.

work by children the articles of the *UDHR* concerned with the rights to education, leisure and decent working conditions, are the more important. These rights have been reaffirmed and elaborated in the *ICESCR*. To give an example, the *UDHR*'s right 'to just and favourable conditions of work',<sup>28</sup> occupies several paragraphs relating to different aspects in the *ICESCR*, for instance: (b) 'Safe and healthy working conditions'.<sup>29</sup> However, a second qualifier, 'A decent living for themselves and their families',<sup>30</sup> calls into question, whether 'just and favourable conditions of work' can be regarded applicable to children.

The third paragraph of Art. 10 of the *ICESCR*, based on an article of the *UDHR* concerned with the protection of the family,<sup>31</sup> introduces a new element, applicable to children *outside* a family environment. In addition to calling for 'protection and assistance on behalf of all children and young people', which is applicable in a family context, the Covenant charges State Parties with the protection of children in a work situation: 'children and young persons should be protected from economic and social exploitation'.<sup>32</sup> States are also charged with the establishment of age limits, below which employment was to be punishable.<sup>33</sup> Since the adoption of the *ICESCR*, phrases, such as 'harmful to their morals or health or dangerous to life or likely to hamper their normal development'<sup>34</sup> or expressions to that effect, feature in all International Instruments concerned with child labour. The special treatment suggests, that work by children occupies a different dimension from work by adults. However,

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<sup>28</sup> *UDHR*, Art. 23(1); *ICESCR*, Art. 7.

<sup>29</sup> Art. 7(b).

<sup>30</sup> Art. 7(a)(ii).

<sup>31</sup> *UDHR*, Arts. 16(3), 25(2).

<sup>32</sup> Art. 10(3).

<sup>33</sup> Art. 10(3).

<sup>34</sup> Terms similar to 'dangerous to the life, health or morals' in Art. 5 of the ILO C79 Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946, and again in the Preamble of the 1965 ILO Minimum Age (Underground) Convention.

according to a recent decision, *Art.7* of the *ICESCR*, 'the right to the enjoyment of just and favourable conditions of work'<sup>35</sup> is applicable to the situation of working children.<sup>36</sup>

In addition, the Covenant reaffirms the *UDHR*'s 'right to education' as follows: 'The States Parties to the present Covenant recognize the right of everyone to education', and 'Primary education shall be compulsory and available free to all'.<sup>37</sup> The *ICESCR* has been adopted by the Netherlands, and reaffirmed for the Island of Aruba, but has been signed by the U.S. only.

The *ICCPR* also contains a number of articles worth mentioning in relation to child work. For instance, State Parties are enjoined to 'respect and ensure the rights, recognized in the present Covenant', 'to all individuals within its territory and subject to its jurisdiction', 'without distinction of any kind'.<sup>38</sup> The non-discrimination principle is repeated as 'without discrimination on any ground' in *Art. 26*, 'All persons are equal before the law'.<sup>39</sup> Surely 'all individuals' and 'all persons' include children, even though situations specifically concerned with the protection of children are addressed in a separate article.<sup>40</sup> In addition, *Art. 8*, concerned with the eradication of slavery and forced labour, is applicable to exploitative work, of 'all individuals'. The *ICCPR* has been ratified by all three States in the comparison.

### **5.3.2. A European restatement of the *UDHR***

Even before the adoption of the two Covenants, the Council of Europe restated the political and civil rights laid down the *UDHR* in the form of a binding Convention,

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<sup>35</sup> 7(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value;

7(b) Safe and healthy working conditions;

7(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Decision AF1787, see Chapter 7, footnote 194.

<sup>36</sup> *UDHR*, *Art. 26*, *ICESCR*, *Art. 13(1)* and (2a).

<sup>37</sup> *Art 2(1)*, '... such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status';

<sup>38</sup> *Art. 26*, 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

the 1950 *European Convention on Human Rights (ECHR)*.<sup>41</sup> The *ECHR* contains a number of articles pertinent to the research, such as the prohibition of forced labour<sup>42</sup> and the right to education.<sup>43</sup> The counterpart to the *ECHR*, the 1961 *European Social Charter*, revised in 1996, which covers the social, economic and cultural rights from the *UDHR*, has been formulated as a non-binding Instrument.<sup>44</sup> It contains two articles relevant to the debate: 'The right to just conditions of work'<sup>45</sup> and 'The right of children and young persons to protection'.<sup>46</sup> The latter establishes, among other provisions, the need for a minimum age of admission to employment of age fifteen, with exceptions for light work permitted to younger children,<sup>47</sup> provided their education would not suffer.<sup>48</sup>

### 5.3.3. Protection of special groups under the UN regime

#### 5.3.3.1. Forced labour

Despite the fact, that slavery has been outlawed for well over a century, children suffer exploitation in conditions of servitude in several parts of the world. Although the term 'slavery' in its general form may not be applicable in developed countries, many

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<sup>40</sup> Art. 24(1), 'measures of protection as are required by his [the child's] status as a minor'.

<sup>41</sup> Amended over the years by a number of Protocols. The European Convention contains the right to individual complaint (Art. 34) to the European Court of Human Rights, established to enforce the rights granted by the Convention (Art. 19).

<sup>42</sup> Art. 4, 'Prohibition of forced labour and slavery'.

<sup>43</sup> Art. 2 of the First Protocol: 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'.

<sup>44</sup> Källström, K. (1992). 'Article 23'. *The Universal Declaration of Human Rights: a Commentary*. A. Elde, G. Alfredsson and G. Melander. London; New York, Scandinavian University Press, p. 366. However, the Netherlands has accepted all of the European Social Charter's 72 articles, as well as three articles of the 1988 Additional Protocol. With regard to the Netherlands Antilles, the Netherlands has accepted articles 1, 5, 6 and 16 of the Charter. European Committee of Social Rights (2000). *For the Record: The European Human Rights System 2: Netherlands*, <http://www.hri.ca/fortherecord2000/euro2000/vol2/netherlandsecar.htm>.

<sup>45</sup> Arts. 2(2) 'to provide for public holidays with pay'

2(3) 'to provide for a minimum of four weeks' annual holiday with pay;

2(5) 'to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest';

<sup>46</sup> Art 7, see Appendix 5, for the full text.

<sup>47</sup> Art. 7(1).

<sup>48</sup> Art. 7(3).



under-eighteens are subject to sexual exploitation<sup>49</sup> in situations of virtual slavery<sup>50</sup> and there have also been instances of the exploitation of immigrant girls kept in isolation under the guise of domestic service.<sup>51</sup> Several ILO and UN Conventions, such as the 1947 UN *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, and the 1957 ILO *Abolition of Forced Labour Convention* may in principle all be used to protect young people.<sup>52</sup>

#### 5.3.3.2. The status and rights of women

An Instrument, which contains several articles important in particular to the position of female children is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). These are: Arts. 11, 13 and 14, 'Discrimination in the field of employment': (a) 'The right to work as an inalienable right of all human beings'.<sup>53</sup> Note, that no age qualification has been used. 'All human beings' therefore implies, that the right to work cannot be withheld from girls, if boys of a comparable age are permitted to work. The remaining paragraphs of the article are also applicable,<sup>54</sup> in addition to 'the right to participate in recreational activities, sports

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<sup>49</sup> Defined as sexual abuse by the adult and remuneration in cash or in kind to the child or third persons or person, *Stockholm Declaration and Agenda for Action against the Commercial Sexual Exploitation of Children* (1996), Congress against the Commercial Sexual Exploitation of Children, Stockholm, August 27-31, <http://www.globalmarch.org/virtuallibrary/dci/world-congress.htm>.

<sup>50</sup> Calceos-Santos, O. (2000). *Report on the mission of the Special Rapporteur to Belgium and the Netherlands on the issue of commercial sexual exploitation of children* (30 November-4 December 1998), E/CN.4/2000/73/Add.1. Geneva, UN, Economic and Social Council, §116.

<sup>51</sup> Anderson, B. (1993). *Britain's Secret Slaves, an Investigation into the Plight of Overseas Domestic Workers*. London, Anti-Slavery Society, pp. 31-56.

<sup>52</sup> Table of 'International Instruments.'

<sup>53</sup> Art. 11(1)(a).

<sup>54</sup> (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;  
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;  
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work,  
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

and all aspects of cultural life<sup>55</sup> and 'to participate in all community activities'.<sup>56</sup> Several of these entitlements are granted to males, but denied to female children.

An article found in a weaker form in the *CRC*, also occurs in CEDAW: 'in all cases the interest of the children shall be paramount'.<sup>57</sup> Both the Netherlands and Aruba are State Parties to CEDAW, which has been signed by the U.S. only.

#### 5.4. Child labour and Children's Rights Instruments

##### 5.4.1. A new Declaration on the Rights of the Child

In the same year the *UDHR* was adopted, the 1924 *Declaration of the Rights of the Child* was restated as a United Nations Instrument, soon to be superseded by a new 1959 *Declaration of the Rights of the Child*.<sup>58</sup> Principle 9<sup>59</sup> goes back to Principle IV of the 1924 *Declaration*, whilst 'the right to free and compulsory education' is derived from the *UDHR*.<sup>60</sup> The importance of play in children's lives has been recognised by the provision of 'full opportunity for play and recreation'.<sup>61</sup>

##### 5.4.2. The ILO Minimum Age Convention

This section covers binding Instruments specifically concerned with the protection from economic exploitation of children and young people. As the rationale for the Instruments as stated in the various Preambles does not always give the full picture, alternative formulations proposed at the Instruments' drafting stage are also examined.

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<sup>55</sup> Art. 13(1)(c).

<sup>56</sup> Art. 14(2)(f).

<sup>57</sup> Art. 16(1)(d, f), 'The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases 'the interests of the children shall be paramount', and 'The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases 'the interests of the children shall be paramount'.

<sup>58</sup> U.N. Doc. A/4354 (1959).

<sup>59</sup> Principle 9, 'The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form'.

<sup>60</sup> *UDHR*, Art. 26(1).

<sup>61</sup> Principle 7, covering education, here as a means to develop the child's abilities and judgement without any connotation of training for future employment, in contrast with the earlier *Declaration*.

The adoption of a Convention to consolidate ten earlier ILO Conventions, which specified minimum ages for particular types of employment, was first proposed in 1972 at the 57<sup>th</sup> Session of the International Labour Conference. The proposal for the new Convention was introduced with a reminder of the ILO's success in working towards the well-being of children and the abolition of child labour, as if the two are one and the same.<sup>62</sup> The reference to 'well-being' has been omitted from the Preamble to the *Minimum Age Convention*, whilst 'abolition' has become 'total abolition'. Several other reasons were pointed out for the adoption of a new Convention. In addition to the need to abolish child labour as a source of cheap manpower<sup>63</sup> which could deprive adults of job opportunities in times of unemployment,<sup>64</sup> it was argued, that permitting children to work instead of keeping them in education would perpetuate a country's poverty and backwardness.<sup>65</sup> Objections were raised against the proposed age of entry into labour of fourteen, which would be a step backward from the fifteen-year lower age limit established in several earlier Conventions.<sup>66</sup> Also, a potential gap between the completion of compulsory schooling and the commencement of employment might have an unfavourable effect on a young person's training.<sup>67</sup> Others argued it was unrealistic to keep children of fourteen out of productive employment, if no secondary education was available, as forced idleness might well lead to delinquency.<sup>68</sup> Also, children from the age of fourteen should have the right to work, if their family depended

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<sup>62</sup> ILO (1972). 'Report of the Committee on Minimum Age: Submission, Discussion and Adoption'. *International Labour Conference, 57th Session; Record of Proceedings*. Geneva, ILO, p. 638.

<sup>63</sup> ILO (1973b). 'Minimum Age for Admission to Employment, Report IV(2)'. *International Labour Conference, 58th Session*. Geneva, ILO, p. 4.

<sup>64</sup> ILO 'Report of the Committee on Minimum Age: Submission, Discussion and Adoption', p. 680; ILO 'Minimum Age for Admission to Employment, Report IV(2)', p. 8.

<sup>65</sup> ILO, 'Report of the Committee on Minimum Age: Submission, Discussion and Adoption', p. 680.

<sup>66</sup> ILO, 'Minimum Age for Admission to Employment, Report IV(2)', p. 4.

<sup>67</sup> ILO, 'Minimum Age for Admission to Employment, Report IV(2)', p. 8.

<sup>68</sup> ILO, 'Report of the Committee on Minimum Age: Submission, Discussion and Adoption', p. 670.

on their support.<sup>69</sup> The final version leaves underdeveloped states the option of initially choosing the lower age of fourteen with the intention to raise the age progressively, if and when conditions allow.<sup>70</sup>

The *Minimum Age Convention* recognises the connection between child work and education, in the form of two distinct phases of a young person's life: a period intended to prepare the child for the future by schooling, followed by one in which she is permitted to apply for work.<sup>71</sup> The age of entry into labour<sup>72</sup> was to be demarcated by a minimum age for employment determined by the State Party. Once the age separating schooling from work-time has been established, the State undertakes to maintain that separation.<sup>73</sup> However, the *Convention* contains a provision for light work by children from thirteen to fifteen whilst in education,<sup>74</sup> in accordance with established national regulation.<sup>75</sup> As raising the age to leave school in order to start working to sixteen was really regarded by that time as preferable, the *Convention* also specifies a possible age of entry into labour of sixteen.<sup>76</sup> It also establishes an age limit of

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<sup>69</sup> ILO, 'Report of the Committee on Minimum Age: Submission, Discussion and Adoption', p. 681.

<sup>70</sup> States may progressively raise the age of entry into labour, Art. 2(2).

<sup>71</sup> States Parties are exhorted 'to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons', Art. 1.

<sup>72</sup> The *Minimum Age Convention* does not make any distinction between formal 'employment' and informal 'work'; either requires the establishment of a lower age.

<sup>73</sup> 'no one under that age shall be admitted to employment or work in any occupation', i.e. the minimum age mentioned in Art. 1 '[...] less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years', Art 2(3).

<sup>74</sup> Art. 7(1); (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

<sup>75</sup> Permission to engage in work outside school hours also applies to young people over the age of compulsory education, Art. 7(2).

<sup>76</sup> Art. 3(3), 'Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity'.

eighteen for work likely to endanger the health, safety or morals of young people<sup>77</sup> instead of the age of 'no less than sixteen years' of the *Minimum Age (Underground Work) Convention*, 1965.<sup>78</sup>

It was argued, that including a definition of 'light work' would be desirable, as the term might otherwise easily give rise to abuse.<sup>79</sup> Although the *Recommendation* accompanying the *Convention* contains a list of hazardous activities, the decision of what constitutes work that is 'not likely to be harmful to [children's] health or development'<sup>80</sup> or 'not such to prejudice [children's] attendance at school'<sup>81</sup> has been left to the 'competent authority'.<sup>82</sup> This Instrument, the non-binding *Recommendation concerning Minimum Age for Admission to Employment (Minimum Age Recommendation)* urges States Parties to adopt 'inter-related measures necessary to provide the best possible conditions of physical and mental growth for children and young persons', including a 'commitment to full employment'.<sup>83</sup> The third element of the triad 'work - education and/or training - rest and leisure', takes the form of rest-periods during the day in addition to night-rest, weekly rest periods and vacation by the restriction of working hours.<sup>84</sup> The *Recommendation* also provides for establishment of fair and equal pay without any discrimination,<sup>85</sup> without, however, going as far as

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<sup>77</sup> Art. 3(1), 'The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years' and Art. 3(2), referring in the *Minimum Age Recommendation*, Art. 10(1) to 'the relevant international labour standards' regarding harmful work.

<sup>78</sup> Art. 2(3). However, the accompanying *Recommendation R124*, the *Minimum Age (Underground Work) Recommendation* urges States in Art. 3(1) to raise the minimum age for underground work progressively to eighteen.

<sup>79</sup> ILO (1973a), 'Minimum Age for Admission to Employment, Report IV(1)', *International Labour Conference, 58th Session*. Geneva, ILO, p. 20.

<sup>80</sup> Art. 7(1)(a).

<sup>81</sup> Art. 7(1)(b).

<sup>82</sup> Art. 7(2).

<sup>83</sup> Part I, Art. 1, 2(a).

<sup>84</sup> ILO *Minimum Age Recommendation R146* '... the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities,' Art. 13(1)(b, d).

<sup>85</sup> Art. 13(1)(a), 'the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work.'

urging States Parties to decide on a minimum wage for workers below the age of eighteen. Employers are charged with record keeping in order to enforce age restrictions,<sup>86</sup> whilst young people in informal work are to be issued licenses.<sup>87</sup> No account is taken of the special requirements of working girls: the children targeted in the Convention and Recommendation are genderless. The Convention has been ratified by two of the States in the study, the Netherlands and Aruba, but not by the U.S.<sup>88</sup>

### 5.4.3. The Convention on the Rights of the Child

#### 5.4.3.1. Development of the CRC

In 1979 Poland proposed the formulation of a binding Convention, based on the 1959 Declaration, on the occasion of the Year of the Child.<sup>89</sup> Instead, the resulting Convention grew into something of greater significance, inspired, among other things, by Korczak's version of the rights of the child, whilst also reflecting participation by the ILO.<sup>90</sup> Until the adoption of the CRC, International Instruments, such as the 1924 and 1959 Declarations of the Rights of the Child, tended to construct children as holders of rights of welfare and protection only.<sup>91</sup> The use of pronouns referring to the child in the two Declarations is revealing. Where the 1924 Declaration used the neutral 'it', thereby construing the child as an object, the pronoun changed to the masculine 'he' in the 1959 Declaration, as if the drafters woke up to the fact that 'the child' should be

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<sup>86</sup> Art. 9(3).

<sup>87</sup> Art. 16, *Minimum Age Recommendation*.

<sup>88</sup> Ratified 14/09/1976 by the Netherlands, accepted for Aruba 24/03/87.

<sup>89</sup> Also designated 'The Year of Janusz Korczak' by UNESCO, to mark the centenary of his birth Joseph, Ed. *A voice for the child; The inspirational words of Janusz Korczak*, p. 181.

<sup>90</sup> Cantwell, N. (1992). 'The Origins, Development and Significance of the United Nations Convention on the Rights of the Child'. *The United Nations Convention on the Rights of the Child: a Guide to the "Travaux Préparatoires"*. S. Detrick, ed. Dordrecht, London, Martinus Nijhoff Publishers. pp. 21, 24.

<sup>91</sup> Only rarely are children designated specifically as independent right-holders, such as in the ICCPR, Art. 24(2). 'Every child shall be registered immediately after birth and shall have a name' and 3. 'Every child has the right to acquire a nationality', whilst ICESCR, Art. 13(1) provides: 'The States Parties to the present Covenant recognize the right of everyone to education', which includes children. Otherwise childhood is described as 'entitled to special care and assistance', Art. 25(2) of the UDHR, which also emphasises the right of parents to choose the type of education for their children in Art. 26(3).

regarded as a person. On the other hand the CRC's expression 'he or she'<sup>92</sup> indicates awareness, that 'the child' also is a gendered individual, as confirmed by the emphasis on 'sex' as a ground for non-discrimination.<sup>93</sup> The usage is at variance with the view, that the phrase 'he or she' solely implies gender-neutrality.<sup>94</sup> The CRC has been ratified by two of the States considered in the study, the Netherlands and Aruba, but not by the U.S.

#### 5.4.3.2. Articles of the CRC pertinent to the study

##### *General Principles*

As mentioned in Chapter 4, the Committee for the Rights of the Child has designated Arts. 2, 3, 6 and 12 as fundamental to the interpretation of the Convention.<sup>95</sup> As these articles have an overriding importance to the understanding of the content of the Convention, they are discussed here in greater detail. Art. 2, 'non-discrimination' enjoins 'States Parties to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind'.<sup>96</sup> A proposal to replace the original expression 'within their territories' with 'lawfully in its territory', was rejected, as it would restrict the rights laid down in the draft Convention to children, who were lawfully in the territory of a State Party.<sup>97</sup> In the event the 1989 Working Group preferred the expression, 'within their jurisdiction' as used in

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<sup>92</sup> Both the initial use of the masculine, and the omission of discrimination on the grounds of sex in Art. X of the original draft Convention were criticised by New Zealand, 35<sup>th</sup> Session of the Commission on Human Rights, Detrick, S., Ed. (1992). *The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires"*, Dordrecht, London, Martinus Nijhoff Publishers, p. 85. Whilst 'sex' was included in the non-discrimination article by the 1980 Working Group, E/CN.4/1349, Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires"*, p. 141, the expression 'he or she' was not used until 1986.

<sup>93</sup> Art. 2(1).

<sup>94</sup> Olsen, F. (1992). 'Children's Rights: some Feminist Approaches to the United Nations Convention on the Rights of the Child'. *Children, Rights and the Law*. P. Alston, S. Parker and J. Seymour. Oxford, Oxford University Press, p. 198.

<sup>95</sup> See Section 4.8.

<sup>96</sup> Art. 2(1), listing of grounds for discrimination, with the omission of 'age', which is included in the 1997 Treaty establishing the European Communities.

<sup>97</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires"*, p. 142, § 40.

the *ECHR*,<sup>98</sup> over the proposed 'in their territories or subject to their jurisdiction' as, for instance, in the *ICCPR*.<sup>99</sup> Discussion of Art. 3, the 'best interests' article gave rise to controversy, when it was argued that the expression, used by the 1980 Working Group, 'the *paramount* consideration' was too wide, as other legal interests might be superior to the 'interests of the child'.<sup>100</sup> The adoption of the modified text has resulted in an expression of weaker protective force than the original text. It has, however, been suggested, that 'with regards to child labour, its effect has been to insert into international debate the heretofore unfamiliar demand that any intervention be, accountable to children before adults'.<sup>101</sup>

The proposal submitted to the 1988 Working Group to include the 'right to life',<sup>102</sup> which had been omitted from the draft Convention, led to the formulation of the present Art. 6. Summing up the debate the Chairman-Rapporteur stated that 'the right to life' should be given priority over the other rights of the child, as a positive value taking 'into account economic, social and cultural traditions' in contrast with the negative 'right to life as enshrined in the *ICCPR*'.<sup>103</sup> The second paragraph of the article, 'States Parties shall ensure to the maximum extent possible the survival and development of the child', links to articles tending to the 'provision' principles of the *CRC*, such as Art 27, 'standard of living'. The basic working text of what is now Art. 12, 'the child's right to express opinions',<sup>104</sup> gave the child the opportunity to express her opinions on a range

<sup>98</sup> Art. 1.

<sup>99</sup> E.g. Art. 2(1), Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires"*, p. 147, §162.

<sup>100</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child : a guide to the "Travaux préparatoires"*, pp. 132-133, § 19.

<sup>101</sup> Myers, W. E. (1999). 'Considering Child Labour; Changing Terms, Issues and Actors at the International Level.' *Childhood - a Global Journal of Child Research*, vol. 6(1), p. 14.

<sup>102</sup> As Art 1bis, 'The States Parties to the present Convention undertake to create an environment, within their capacities and constitutional process, which ensures, to the maximum extent possible, the survival and healthy development of the child', Detrick, Ed. *The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires"*, p. 120, § 14.

<sup>103</sup> Art. 6(1)'. 'No one shall be arbitrarily deprived of his life' Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires"*, p. 121, §§ 21-22.

<sup>104</sup> See Chapter 4, footnote 85.



of issues, which concerned her closely.<sup>105</sup> As the proposed list was regarded too restrictive, it was replaced by the words 'all matters', whilst the word 'freely' was inserted after 'expressing his views'. Of late, it has been acknowledged, that there may be an international dimension to the interpretation of the expression 'all matters affecting the child', for instance by the presence of young people at Sessions of the Committee on the Rights of the Child. Although the notion that the right of young people to express their views freely might be applicable in a wider than national context, may not have been considered by the 1979 Working Group,<sup>106</sup> the rights accorded by Art. 12 have since been interpreted more widely. Whereas the presence of young people under eighteen was unthinkable at official international meetings before the adoption of the CRC, the attendance of youth delegates at Sessions of the Committee on the Rights of the Child has now become an accepted practice.

The four interpretive articles, raised to the status of *general principles* by the Committee on the Rights of the Child, have become very influential. No article from the CRC can be considered in isolation. The child can no longer be treated as a non-entity without a voice; the rights granted by the Convention concern her, whether she has a legal status within a certain jurisdiction or not, her interests are of primary importance and she is to be guarded against any discrimination.<sup>107</sup> In addition, Art. 1, 'definition of child', deserves further mention in the context of child work, more specifically in relation to the age of the end of childhood.<sup>108</sup>

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<sup>105</sup> Art. 7(1) 'The States Parties to the present Convention shall enable the child who is capable of forming his own views the right to express his opinion in matters concerning his own person, and in particular marriage, choice of occupation, medical treatment, education and recreation', Detrick, S., Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*. Dordrecht, London, Martinus Nijhoff Publishers, p. 224, §73.

<sup>106</sup> Art. 7(2), now Art. 12(2) 'For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law'. Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 227, §235.

<sup>107</sup> 'Age' is, however, not mentioned as a reason for discrimination.

<sup>108</sup> Discussed in Chapter 2, section 2.3.1.1.

*Three complementary rights: protection from exploitation, education and leisure*

As argued in Section 5.1., the rights to education and leisure should be considered complementary to the right to 'protection from economic exploitation'. Such a link has been recognised in Canadian proposals to the 1983 and 1984 Working Groups for the CRC.<sup>109</sup> However, the Committee on the Rights of the Child uses a thematic listing of articles, resulting in the separation of Art. 32, 'economic exploitation', placed in cluster (c), 'Children in situations of exploitation', from Arts. 28, 29 and 31, in category VII, 'Education, leisure and cultural activities',<sup>110</sup> which obscures the connection.

*Protection from economic exploitation*

Two articles dealing with exploitation in the CRC cover activities, that may be regarded as child labour, according to the definition used for the thesis. These are: Arts. 32, the right to protection 'from economic exploitation',<sup>111</sup> and 34, 'from sexual exploitation'.<sup>112</sup> Originally the various types of exploitation were combined in one article in the basic working text: 'The child shall be protected against all forms of discrimination, social exploitation and degradation of his dignity. He shall not be the subject of traffic and exploitation in any form'.<sup>113</sup> The expression 'degradation of his dignity' was separated into two elements, 'violating the moral, spiritual or physical integrity of the child' and 'degrading treatment' according to a Canadian proposal in the 1986 Session,<sup>114</sup> weakening the sense of 'self-worth' implied in the term 'dignity'. The same proposal also spoke of 'all exploitation, including sexual exploitation', eventually

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<sup>109</sup> Proposed Art. 18(2) 'Parents, States Parties, educational institutions and others caring for children shall take steps to implement this right, including making reasonable limitations on school and working hours', Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 415, now Art. 31(2), 'The right to rest and leisure'.

<sup>110</sup> UN Doc. CRC/C/5 (1991).

<sup>111</sup> Art. 32(1).

<sup>112</sup> Defined as 'inducement of a child to engage in an unlawful sexual activity' (Art. 34(a)) and 'exploitative use of children in prostitution', (Art. 34(b)).

<sup>113</sup> Art. 19(1), basic working text, E/CN.4/1349, p. 6, Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 418.

resulting in the formulation of separate articles relating to different types of exploitation.<sup>115</sup>

Despite the fact that the first paragraph of Art. 32 specifies the right to protection from 'economic exploitation', a term absent from the ILO Conventions concerned with child work, the *CRC* like the *ICESCR*, does not define the nature of 'economic exploitation'.<sup>116</sup> In addition, the article specifies the right to protection from three types of unacceptable work, namely, i) hazardous work, ii) work interfering with the child's education, or iii) work likely to be harmful to the child's development. The article also provides for i) the establishment of a minimum age for admission to employment, ii) regulation of hours and conditions of employment, and iii) sanctions to ensure effective enforcement.<sup>117</sup> A proposal to add the term 'work' to 'admission to employment', changing the phrase into 'admission to employment or work',<sup>118</sup> as in the *Minimum Age Convention*,<sup>119</sup> was first accepted. When it was pointed out, that the wording might prevent participation of children in traditional forms of work under the direction of their parents,<sup>120</sup> the word 'work' was deleted. On the other hand, if one compares Art. 32 with the *ICESCR*, which provides for the establishment of a limit

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<sup>114</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 421, § 68, subsections 1 and 3.

<sup>115</sup> Arts. 32-36, 'economic exploitation', 'protection from narcotic and psychotropic substances', 'sexual exploitation', 'trafficking' and 'all other forms of exploitation'.

<sup>116</sup> According to a statement by Marta Santos Pais, "Exploitation means taking unjust advantage of another for one's own advantage or benefit. It covers situations of manipulation, misuse, abuse, victimization, oppression or ill-treatment." Committee for the Rights of the Child. (1993). *Economic Exploitation of Children (CRC/C/20, 4<sup>th</sup> Session, 4 October 1993*, pp. 1-15.

<sup>117</sup> Art. 32(2), States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

<sup>118</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 421, § 70.

<sup>119</sup> Art. 2(1).

<sup>120</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 422, § 73.

below which 'paid employment of child labour' should be punishable,<sup>121</sup> the CRC does not distinguish between paid and unpaid work, concentrating instead on the protection of the child from potential hazards.<sup>122</sup>

For the purpose of the study, paragraph b) of Art. 34, 'The exploitative use of children in prostitution or other unlawful practices', is of greatest interest, as the use of children in 'pornography' or 'unlawful sexual activity' do not form part of the investigation. The words 'exploitative' and 'unlawful' gave rise to discussion, as it was proposed to delete the word 'unlawful', since there could be no exploitative use of children in sexual practices, which was lawful.<sup>123</sup> As the term 'exploitative' could refer to other kinds of exploitation than economic or sexual, it was decided to introduce further articles covering trafficking of children and other forms of exploitation. Instead of the elaborate implementation measures of Art. 32, 'the right to protection from sexual exploitation' restricts itself to obligating States Parties to 'take appropriate national, bilateral and multinational measures'.<sup>124</sup>

#### *The right to education*

The Right to Education is represented in the CRC by Arts. 28. and 29 'the Right to Education' and 'the Aims of Education'. These rights have been affirmed throughout, since the adoption of the 1948 UDHR, both in general human rights instruments and the ones concerned with children. The system of compulsory education saw itself attacked by advocates of children's rights claiming the same rights for children as adults, including 'a right to learn' instead of a prescribed diet of schooling.<sup>125</sup> On the other hand the provision of compulsory education is regarded as an important factor in

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<sup>121</sup> Art. 10(3).

<sup>122</sup> Art. 32(1).

<sup>123</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, pp. 433-434, §§ 85, 87.

<sup>124</sup> The term 'appropriate measures' has been elucidated in the Optional Protocol to the CRC 'on the Sale of Children, Child Prostitution and Child Pornography', which defines prostitution as: 'the use of a child in sexual activities for remuneration or any other form of consideration' (Art. 2(b)).

<sup>125</sup> Holt, J. (1975). *Escape from Childhood*, p. 183.

the abolition of child labour,<sup>126</sup> capable of liberating children from exploitative relationships.<sup>127</sup> The CRC's 'right to education' uses an expression similar to the ICESCR, 'Primary education shall be compulsory and available free to all'.<sup>128</sup> It does, however, not include a right of parents to choose a school for their children as provided in the ICESCR,<sup>129</sup> as proposed,<sup>130</sup> when the reference to parents in the working text<sup>131</sup> was replaced by a clause on recognition of the right to education by the State.<sup>132</sup>

Art. 28(b) of the CRC, 'States Parties shall encourage different forms of secondary education, including [ . . . ] 'vocational education' [ . . . ] 'offering financial assistance in case of need', is a reminder of the commitment to promote opportunities for work by practical measures in several earlier children's rights declarations.<sup>133</sup> This provision is the only acknowledgement in the CRC, that fulfilment of the right to education in itself does not lead to finding work.

*The right of the child to rest and leisure, play and recreation*

'The right to protection from economic exploitation' (Art. 32.) is also linked to Art. 31, 'The right to rest and leisure' of the CRC. Until the formulation of Principle 7 of the *Declaration on the Rights of the Child*, this right was associated with the sense of respite from work as in the UDHR<sup>134</sup>. Although directed at 'everyone', it clearly applied

<sup>126</sup> Alston, P. (1989). 'Implementing Children's Rights: The Case of Child Labour.' *Nordic Journal of International Law*, vol. 58(1), p. 45.

<sup>127</sup> It imposed the duty on 'men and women of all nations' as individuals rather than on States (*Preamble of the first United Nations Declaration on the Rights of the Child*).

<sup>128</sup> Art. 13(2)(a).

<sup>129</sup> Art. 13(3).

<sup>130</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 384, § 62.

<sup>131</sup> Original Art. 18(1), basic working text, E/CN.4/1349, p. 5, 'The child shall have the right to education which shall be free and compulsory, at least at elementary school level. The parents and the State shall guarantee the child ample conditions for the realization of this right'.

<sup>132</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 384, § 57.

<sup>133</sup> E.g. Principle IV of the 1924 Declaration.

<sup>134</sup> UDHR, Art. 24 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay', restated in the ICESCR as Art. 7(d) 'Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays', see also footnote 23 of this chapter.

to people, for whom work was the norm. While the term 'play' only occurs in instruments concerned with children, the more purposive term 'recreation' is used instead of the word 'play' as an indication that it is an activity, worthy of the attention of older, more substantial right-holders. Much has been written about the function of play in the context of socialisation and its potential to prepare children for their future adult roles.<sup>135</sup> However, 'a conception of play no more than imitative of the real world of adults' is to disregard its character of 'creative social action'.<sup>136</sup>

Art. 31 links the right to 'rest', that surely means 'rest from demanding activities such as schooling or employment', with leisure and participation in cultural and artistic life. Whereas the right to rest from labour has been recognised as applicable to both adult workers and children,<sup>137</sup> it is much less clear whether the 'right to play' should be realised by the provision of equipment, play-grounds or periods free from other pursuits. Misgivings of this kind led a member of the Working Group to express 'doubts with regard to proclaiming a universal right to [leisure and recreation], preferring to deal with the issue in the context of the provision against economic and social exploitation'.<sup>138</sup>

#### **5.4.4. Prostitution - the need for special measures**

The commodification of juvenile sexuality has been a common phenomenon throughout the nineteenth and twentieth centuries.<sup>139</sup> Of late, a problem of trafficking of women and children for the purpose of sexual exploitation has resurfaced in both the United States and Western Europe.<sup>140</sup> Several International Instruments, which were

<sup>135</sup> Doyal, L. and J. Gough (1991). 1st ed. *A theory of human need*. Basingstoke, Macmillan Education Ltd, p. 206; Hart and Petrén, 'The Right to Play', p. 110.

<sup>136</sup> James, A., C. Jenks, *et al.* (1998). *Theorizing Childhood*, p. 93.

<sup>137</sup> See Section 7.3.2.1.

<sup>138</sup> Detrick, S. Ed. (1992). *The United Nations Convention on the Rights of the Child: a guide to the "Travaux Préparatoires"*, p. 416, § 109.

<sup>139</sup> Ennew, J. (1986). *The Sexual Exploitation of Children*. Cambridge, Polity Press, p. 33.

<sup>140</sup> Calcetos-Santos, O. (1997a). *Rights of the child (E/CN.4/1997/95)*; Report on the mission of the Special Rapporteur to the United States of America on the issue of commercial sexual exploitation of children (9-20 December 1996). Economic and Social Council, §§ 56-57. Calcetos-Santos Report on the mission of the Special Rapporteur to Belgium and

not formulated specifically with children in mind, are applicable. For instance, the *Slavery Convention* mentioned earlier, the 1957 ILO *Abolition of Forced Labour Convention* and the 1947 UN *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* could in principle all be used.<sup>141</sup> Yet these Instruments have been found inadequate to protect young people.

#### **5.4.5. The Stockholm Agenda for Action**

During the course of the 1990s the commercial sexual exploitation of children was put firmly on the international agenda. An important agreement was formulated at an international conference, the World Congress against the Commercial Sexual Exploitation of Children, organised by the Swedish Government and the United Nations Children's Fund (UNICEF), the NGO End Child Prostitution in Asia (ECPAT), and the NGO Group for the Convention on the Rights of the Child. The conference resulted in an *Agenda for Action against Commercial Sexual Exploitation of Children* (CSEC),<sup>142</sup> which urges national governments to draft national plans for action in order to combat the sexual exploitation of children, with a view of coordinating the activities of government agencies and NGOs. The most important points of the resolution adopted by the Congress concern the development of preventative measures, implementation and monitoring mechanisms and programmes to provide support to families and children vulnerable to commercial sexual exploitation. One of the key points of the policy document is the participation of 'experiential' youth in preventative approaches.<sup>143</sup> The importance of the *Agenda for Action* is not in doubt. Not only has the Committee on the Rights of the Child referred several times to the *Agenda* in its

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the Netherlands on the issue of commercial sexual exploitation of children (30 November-4 December 1998), E/CN.4/2000/73/Add.1., §§ 110-122.

<sup>141</sup> Table of 'International Instruments'.

<sup>142</sup> World Congress Against Commercial Sexual Exploitation of Children (1996). Declaration and Agenda for Action. Stockholm. <http://www.globalmarch.org/virtuallibrary/dci/world-congress.htm>.

<sup>143</sup> World Congress Against Commercial Sexual Exploitation of Children (1996). Declaration and Agenda for Action, § 6.

*Concluding Observations* in connection with Arts. 34 and 35 of the CRC,<sup>144</sup> but it has also been recommended by the Council of Europe.<sup>145</sup> Support for the Agenda has been strengthened by the adoption of the *Yokohama Global Commitment*,<sup>146</sup> which charges States with taking action against CSEC.

#### **5.4.6. The Worst Forms of Child Labour Convention**

The level of ratification of the ILO *Minimum Age Convention* had remained disappointingly low<sup>147</sup> and did not lead to the elimination of unacceptable child work even in affluent countries.<sup>148</sup> Therefore the 1996 International Labour Conference adopted a resolution to direct greater effort to the eradication of practices maintaining children in work in intolerable conditions.<sup>149</sup> The decision also reflects recognition of the fact, that many children have no alternative but to work for their own and their

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<sup>144</sup> For instance, during the 32nd Session of the Committee to the Reports by Estonia, Committee on the Rights of the Child (January 2003). 'UN Doc. CRC/C/15/Add.196, Report on Estonia: Concluding Observations of the Committee on the Rights of the Child,' 32nd Session, §§ 48-49; Italy; Committee for the rights of the child (2003). Concluding observations of the Committee on the Rights of the Child: Italy; CRC/C/15/Add.198. Geneva, § 50, Romania; Committee on the rights of the Child (2003). Concluding observations of the Committee on the Rights of the Child: Romania; CRC/C/15/Add.199. Geneva, § 59 and Iceland, Committee on the rights of the Child (2003). Concluding observations of the Committee on the Rights of the Child: Iceland; CRC/C/15/Add.203. Geneva, § 39.

<sup>145</sup> Council of Europe - Committee of Ministers (2000). Adopted at the 710th meeting of the Ministers' Deputies Trafficking in human beings for the purpose of sexual exploitation; Recommendation No. R (2000) 11 adopted by the Committee of Ministers of the Council of Europe on 19 May 2000 and Explanatory memorandum. Strassbourg, Council of Europe. [www.humanrights.coe.int/equality/Eng/MainActivities/trafficking.htm](http://www.humanrights.coe.int/equality/Eng/MainActivities/trafficking.htm), § 48.

<sup>146</sup> 2nd World Congress against the Commercial Sexual Exploitation of Children (2001). Yokohama Global Commitment.

<sup>147</sup> By 1996 only forty-nine ILO members had ratified the Minimum Age Convention, International Labour Conference (1996). 'Resolution concerning the most exploitative Forms of Child Labour'. Report of the Resolutions Committee, Provisional Record 11, Record of Proceedings, eighty-third Session. Geneva, International Labour Office. 11/4-11/29, including twenty-one from developing countries, but none from Asia, 'Children and Work.' (1996). IPEC, November 1996, p. 5.

<sup>148</sup> International Labour Conference 'Resolution concerning the most exploitative Forms of Child Labour' (1998). General Discussion, International Labour Conference, 86th Session; Record of Proceedings. Geneva, ILO, <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-chil.htm>, p. 11/4, § 19.

<sup>149</sup> Resolution III, International Labour Conference (1996). 'Resolution concerning the Elimination of Child Labour (Resolution III)'. Resolutions adopted by the Conference, Record of Proceedings, eighty-third Session. Geneva, International Labour Office. pp. 2-4



families' survival.<sup>150</sup> In addition, some States found the application of the *Minimum Age Convention* problematic, because of its rigid prescription and the inflexibility of its interpretation.<sup>151</sup> A law and practice report, *Child Labour, Targeting the intolerable*,<sup>152</sup> which drew upon the results of a questionnaire to governments<sup>153</sup>, was issued at the next International Labour Conference in order to brief delegates concerning the context of hazardous child work.<sup>154</sup> The Preamble of the resulting *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, C182 (*Worst Forms of Child Labour Convention*)<sup>155</sup> emphasises the connection with the *Minimum Age Convention* and *Recommendation* and the ILO and UN Conventions on forced labour and slavery.<sup>156</sup> In addition, the Preamble refers to the human rights principles embodied in the *CRC* and the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*.

A definition of the 'worst forms' is not as straightforward as one might think. The *Convention* specifies four categories of 'worst forms of labour', three of which have been considered in the present study, namely i) child slavery,<sup>157</sup> ii) child prostitution,<sup>158</sup>

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<sup>150</sup> International Labour Conference (1998). 'General Discussion'. International Labour Conference, 88th Session; Record of Proceedings. Geneva, ILO, <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/com-chil.htm> § 43.

<sup>151</sup> Plenary Session, International Labour Conference 'Resolution concerning the most exploitative Forms of Child Labour', Report of the Resolutions Committee, Provisional Record 11, Record of Proceedings, eighty-third Session. Geneva, International Labour Office, 11/7, 11/9, § 27.

<sup>152</sup> International Labour Office (1996). *Child Labour: Targeting the intolerable*; Report VI (1). Geneva, International Labour Office., Questionnaire.

<sup>153</sup> Report VI(1), Questionnaire, <http://www.ilo.org/public/english/comp/child/publ/target/question.htm>.

<sup>154</sup> Report of the ILO Programme, Financial and Administrative Committee, GB.270/PFA/10, 270th Session, Geneva, November 1997, § 62, [www.ilo.org/public/english/standards/relm/gb/docs/gb270/pfa-10.htm](http://www.ilo.org/public/english/standards/relm/gb/docs/gb270/pfa-10.htm).

<sup>155</sup> Adopted, 17/06/1999, into force 19/11/2000, ratified by the U.S. 02/12/99, by the Netherlands 14/02/02, but not accepted for Aruba.

<sup>156</sup> Table of 'International Instruments'.

<sup>157</sup> Art. 3(a) 'all forms of slavery and practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict'.

<sup>158</sup> Art. 3(b) 'the use, procuring or offering of a child for prostitution, for the production of pornography or of pornographic performances'.

and iii) any work likely to harm the health, safety or morals of children.<sup>159</sup> The last category deserves further explanation. Despite the same wording for the definition of hazardous work unsuitable for persons under eighteen of the ILO *Minimum Age Convention*<sup>160</sup>, delegates opted for a more limited scope for the new Convention,<sup>161</sup> in order to target explicitly 'hazardous work posing imminent danger'.<sup>162</sup> Despite the decision not to include systematic denial of access to education as one of the criteria defining the 'worst forms' as proposed<sup>163</sup>, the importance of education is acknowledged in the Preamble and in Art. 7(2) of the *Worst Forms of Child Labour Convention*<sup>164</sup>. In contrast with the *Minimum Age Convention* no attention is given to the elements 'rest' or 'leisure' in either the *Worst Forms of Child Labour Convention* nor the accompanying *Recommendation*. The words 'leisure' and 'recreation' are only mentioned in passing, for instance by the Worker Vice-Chair of the 86<sup>th</sup> General Session referring to a former child worker from Nepal, who believed that children had "the right to education and recreation, not the right to work."<sup>165</sup> Otherwise children's voices are absent, despite the call for participation by children by several delegates, citing the principle of participation promoted by the *CRC*.<sup>166</sup> Two aspects shared by the

<sup>159</sup> Art. 3(d) 'work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children'.

<sup>160</sup> Art.3(1) 'likely to jeopardise the health, safety or morals of young persons'.

<sup>161</sup> Question raised at the 87th International Labour Conference - Plenary Session (1999). Submission, discussion and adoption of the Report of the Committee on Child Labour. Geneva, ILO. <http://www.ilo.org/public/english/standards/reim/ilc/ilc87/com-chil.htm>, § 10.

<sup>162</sup> Report of the Committee on Child Labour (Corr), 87th International Labour Conference (1999) - Plenary Session Submission, discussion and adoption of the Report of the Committee on Child Labour, § 10.

<sup>163</sup> Committee on Child Labour (1998). Report to the 86th Session of the International Labour Conference. Geneva, ILO. <http://www.ilo.org/public/english/standards/reim/ilc/ilc86/com-chil.htm>, § 6 and Committee on Child Labour Committee on Child Labour (1999). Report to the 87th Session of the International Labour Conference. Geneva, ILO. <http://www.ilo.org/public/english/standards/reim/ilc/ilc87/com-chil.htm>, § 56.

<sup>164</sup> Art. 7(2) "Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour.

<sup>165</sup> Committee on Child Labour Report to the 87th Session of the International Labour Conference (1999), § 21.

<sup>166</sup> 87th International Labour Conference - Plenary Session Submission, discussion and adoption of the Report of the Committee on Child Labour (1999), §§ 269-274.

two Conventions are the definition of a 'child' as a person under eighteen<sup>167</sup> and the recognition of the special needs of girls,<sup>168</sup> which goes back to CEDAW's 'non-discrimination' Art. 10, 'States Parties shall take all appropriate measures to eliminate discrimination against women' and 'In particular ensure on a basis of equality of men and women' Arts 10(a-f), as well as the CRC's 'non-discrimination principle'.<sup>169</sup>

The *Worst Forms of Labour Convention* unequivocally defines a child as a person below the age of eighteen, thereby resolving the question, whether sixteen and seventeen-year olds should be protected from sexual exploitation as children, or treated as adults with the freedom to engage actively in prostitution. As recently as 2000, juvenile prostitutes in industrial societies were as likely to be cautioned or prosecuted for soliciting, as treated as victims of exploitation.<sup>170</sup>

#### 5.4.7. Optional Protocols to the CRC

Since the adoption of the CRC and the *Worst Forms of Child Labour Convention*, two Optional Protocols have been formulated in association with the CRC. These are the Protocols '*On the Sale of Children, Child Prostitution and Child Pornography*'<sup>171</sup> and '*On the Involvement of Children in Armed Conflict*', building on two articles in the CRC, concerned with specific types of exploitation.<sup>172</sup> The Commission on Human Rights first raised the possibility of adopting a *Protocol on the Sale of Children*, in 1994.<sup>173</sup> An open-ended inter-sessional Working Group was charged with formulating guidelines for a draft protocol in co-operation with the Special

<sup>167</sup> Art. 2; CRC, Art. 1.

<sup>168</sup> Art. 7(2)(e), and in the *Worst Forms of Child Labour Recommendation* Art. 2(c)(i-iii). Also, 'the problem of hidden work situations, in which girls are at special risk'; mentioned by the representative from the European NGO coalition, with reference to the CRC, Committee on Child Labour Report to the 86th Session of the International Labour Conference (1998), § 68, related to the non-discrimination article in the CRC, Art. 2.

<sup>169</sup> Art. 2.

<sup>170</sup> See Section 7.3.2.2., California; also applicable to the U.K., Melrose, M. (1999). *One way street? Retrospectives on childhood prostitution*. London, The Children's Society, p. 3.

<sup>171</sup> A/RES/54/263, into force 18/01/2002, and 12/02/2002 respectively, ratified by the U.S., 23/12/2002 and signed by the Netherlands. Art. 3(1)(c) obligates States Parties to ensure that 'engagement of a child in forced labour' is brought under the criminal law.

<sup>172</sup> Arts. 34 and 38.

Rapporteur on the sale of children, child prostitution and child pornography and the Committee on the Rights of the Child. Participants to the Working Group argued, whether the Instrument should focus upon Arts. 34 and 35 of the CRC only, or was to be extended to cover Arts. 20, 21, 32, and 33,<sup>174</sup> as eventually decided.<sup>175</sup> The obligation of States Parties of ensuring, that the activities mentioned in Art. 3(1) are covered under domestic criminal law,<sup>176</sup> gave rise to concern about the potential abuse of children by other children, who would therefore have to be considered as offenders.<sup>177</sup> Another controversy concerned the decriminalisation of child victims under the age of eighteen, which in some instances was in conflict with national legislation.<sup>178</sup> No objection was made to the use of the term 'decriminalisation' in connection with the word 'victim', even though it was argued, that measures were essential to protect child victims, including their privacy.<sup>179</sup> Another suggestion was made to include an article to oblige 'States Parties to ensure cooperation between their appropriate officials in apprehending and prosecuting those responsible [ ] bearing in mind the need to protect the privacy of all involved'.<sup>180</sup> Here the use of the word 'all' suggests, that perpetrators (including their relatives) as well as victims, ought to be entitled to privacy. In the event the issue of the protection of the privacy of perpetrators, even if younger than eighteen, has not been addressed in the final text. Equally a proposal to replace the word 'victim' by the more neutral expression 'children

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<sup>173</sup> Commission on Human Rights (1994). Resolution 1994/9. Geneva, United Nations - Economic and Social Council.

<sup>174</sup> Economic and Social Council (1996). Report of the Working Group on the Optional Protocol E/CN.4/1996/101. Geneva, United Nations, § 31.

<sup>175</sup> The Preamble refers to Art. 11 instead of 20.

<sup>176</sup> Art. 3(1)(a)(i), covering a) 'sexual exploitation of the child', b) 'transfer of organs of the child for profit', and c) 'engagement of the child in forced labour'.

<sup>177</sup> Economic and Social Council Report of the Working Group on the Optional Protocol E/CN.4/1998/103, § 62.

<sup>178</sup> For instance in U.S. domestic legislation, Economic and Social Council Report of the Working Group on the Optional Protocol E/CN.4/1996/101, §§ 50-51.

<sup>179</sup> Art. 8, Economic and Social Council Report of the Working Group on the Optional Protocol E/CN.4/1996/101, § 103.

<sup>180</sup> Economic and Social Council Report of the Working Group on the Optional Protocol E/CN.4/1996/101, § 120.

used in the practices condemned in the present protocol', which would less disparaging to a young person's dignity,<sup>181</sup> has not been adopted.

An issue of major contention was the request of the United States to include a provision in the Protocol 'On the Sale of Children'<sup>182</sup> to permit States to become Parties to the Protocol without prior ratification of the *CRC*.<sup>183</sup> Representatives of several countries objected, that further consultation was required in view of the legal implications for other human rights treaties,<sup>184</sup> whilst others suggested the Protocol could be considered on its own without reference to the parent Convention.<sup>185</sup> Proponents also argued in favour of including the provision for the sake of consistency,<sup>186</sup> as the request had already been granted in case of the Protocol 'On the Involvement of Children in Armed Conflict'.<sup>187</sup> In the event the proposal to add a new paragraph to Art. 13(2) was accepted: 'The present Protocol is subject to ratification or open to accession by any State which is a party to the Convention or has signed it',<sup>188</sup> which, as argued by the U.S., would achieve the widest possible acceptance.<sup>189</sup> The adoption of the provision<sup>190</sup> has enabled the U.S. to ratify the Protocol without first acceding to the *CRC*. Despite the understanding that ratification of the Optional Protocols does not involve any obligations by the U.S. under the *CRC*,<sup>191</sup> its reports concerning progress towards the implementation of the Protocols

<sup>181</sup> Commission on Human Rights (1998). E/CN.4/1998/103. Geneva, United Nations, Economic and Social Council, § 64.

<sup>182</sup> As adopted in the *Protocol on 'the Involvement of Children in Armed Conflicts.'*

<sup>183</sup> Commission on Human Rights (2000a). E/CN.4/2000/WG.14/CRP.3. Geneva, United Nations, Economic and Social Council, § 19.

<sup>184</sup> Commission on Human Rights E/CN.4/2000/WG.14/CRP.3, §§ 31-32.

<sup>185</sup> Commission on Human Rights E/CN.4/2000/WG.14/CRP.3, § 33.

<sup>186</sup> Commission on Human Rights (2000c). E/CN.4/2000/75. Geneva, United Nations, Economic and Social Council, § 38.

<sup>187</sup> Commission on Human Rights (2000b). E/CN.4/2000/74. Geneva, United Nations, Economic and Social Council, §§ 80-81.

<sup>188</sup> Draft Protocol, Commission on Human Rights E/CN.4/2000/75, Annex.

<sup>189</sup> Commission on Human Rights E/CN.4/2000/75, § 42.

<sup>190</sup> Art. 13(2).

<sup>191</sup> 1) 'No Assumption of Obligations under Convention on the Rights of the Child' --The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol 'Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child

need to be in line with the general principles of the CRC, exemplified by Arts. 2, 3, 6 and 12, in the same way as the reports to the Convention itself.<sup>192</sup>

#### 5.4.8. A Regional Instrument

In 1994 the European Union adopted the binding Council *Directive 94/33/EC on the protection of young people at work*, first proposed by the European Parliament in 1987.<sup>193</sup> The Directive refers in the Preamble to the ILO *Minimum Age Convention*, paragraphs 20 and 22 of the *Community Charter of the Fundamental Social Rights of Workers* 1989 and Council Directives 89/391/EEC<sup>194</sup> and 91/533/EEC.<sup>195</sup> 'Having regard to the 1989 United Nations Convention on the Rights of the Child' was added by an amendment to the 1987 draft Directive.<sup>196</sup> In common with the *Minimum Age Convention*, the Directive establishes a minimum age of at least fifteen for entry into labour,<sup>197</sup> separating schooling from work.<sup>198</sup> Children of thirteen and fourteen, who are still subject to education, may perform light work for a limited number of hours a day. Certain types of work are prohibited for young people below the age of eighteen, for instance, work involving harmful exposure to agents [ . . . ] which [ . . . ] chronically affect human health,<sup>199</sup> or 'which is objectively beyond their physical or psychological

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Pornography' - Treaty Document No. 106-37B - (Senate - June 18, 2002), Congressional Record, S5717.

<sup>192</sup> See Reporting Guidelines, United Nations Commission for Human Rights (2002). Guidelines regarding initial reports to be submitted by States Parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography : 04/04/2002, CRC/OP/SA/1. Geneva, United Nations.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.OP.SA.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.OP.SA.1.En?OpenDocument), § 4.

<sup>193</sup> European Parliament (1987). 'Resolution on Child Labour'. Official Journal of the European Communities, vol. 180, June 16 1987, pp. 44-45.

<sup>194</sup> 'On the introduction of measures to encourage improvements in the safety and health of workers at work'.

<sup>195</sup> 'On conditions applicable to the contract or employment relationship' cited in Economic and Social Committee (1992). 'Opinion on the proposal for a Council Decision on the Protection of Young People at Work; 92/C313/19.' OJ, 30 November 1992, No. C.313/70-C.313/73.

<sup>196</sup> European Parliament (1992). 'Proposal for a Directive COM(91)0543 - C3-0126/92-Syn 383.' OJ, 17/12/1992, . Not retained in the final version.

<sup>197</sup> Art. 1.

<sup>198</sup> Expressed as 'a link between education and the labour market so that the minimum age for taking up work corresponds to the age of completion of compulsory schooling', European Parliament 'Proposal for a Directive COM(91)0543 - C3-0126/92-Syn 383'.

<sup>199</sup> Art. 7(2)(b).

capacity.<sup>200</sup> Employers are charged with assessing any possible hazards to young people in connection with their work, before they commence their employment.<sup>201</sup> Young workers<sup>202</sup> and their legal representatives need to be informed of any risks and of all measures adopted to protect the safety and health of young people. The element 'rest' is treated as very important: night rest of at least twelve consecutive hours.<sup>203</sup> In addition, weekly rest periods should be guaranteed,<sup>204</sup> taking 'account of the diversity of cultural, ethnic and other factors prevailing in the Member States',<sup>205</sup> as well as annual periods free from work.<sup>206</sup> Young people are also entitled to a break of at least thirty minutes for every four and a half hours.<sup>207</sup> An area included for the first time, is the regulation of sports,<sup>208</sup> introduced in *Recommendation 874* of the Parliamentary Assembly of the Council of Europe in connection with a proposal for a European Charter of Children's Rights.<sup>209</sup> Member States undertake to submit periodic reports of adopted provisions and implementation measures to the Commission.<sup>210</sup>

## **5.5. Impact of International Instruments**

### **5.5.1. Scrutiny by the international community**

Like several other human rights instruments, the *CRC* employs a self-reporting system,<sup>211</sup> similar to that introduced by the ILO in connection with its own

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<sup>200</sup> Art. 7(2)(a).

<sup>201</sup> Art. 8(2).

<sup>202</sup> Young people between fifteen and eighteen, who are no longer subject to compulsory full-time education, Art. 3.

<sup>203</sup> Art. 10(1).

<sup>204</sup> Art. 10(2).

<sup>205</sup> Preamble.

<sup>206</sup> Art. 11.

<sup>207</sup> Art. 12.

<sup>208</sup> Art. 5(1). 'The employment of children for the purposes of performance in cultural, artistic, sports or advertising activities shall be subject to prior authorization to be given by the competent authority in individual cases'.

<sup>209</sup> Recommendation 874 (1979) on the Charter of the Rights of the Child, points a-d, p. 6, Parliamentary Assembly, Thirty-first Ordinary Session, [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Family\\_law\\_and\\_children's\\_rights/Documents/Rec874\(1979\).pdf](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Family_law_and_children's_rights/Documents/Rec874(1979).pdf).

<sup>210</sup> Art. 17(3-5).

<sup>211</sup> Doek, J. (1992). 'The Current Status of the United Nations Convention on the Rights of the Child'. The United Nations Convention on the Rights of the Child : a guide to the "Travaux Préparatoires". S. Detrick, ed. Dordrecht, London, Martinus Nijhoff Publishers, p. 636.

Conventions.<sup>212</sup> The reports to the various ILO Conventions and the CRC, including the Optional Protocols, are scrutinised by Committees charged with the task.<sup>213</sup> The fact that the CRC permits participation from NGOs in the reporting process,<sup>214</sup> enables the Committee to obtain a more balanced view from the alternative reports produced by NGO coalitions.<sup>215</sup> In addition, the CRC provides for the provision of expert advice from specialist UN agencies and other competent bodies, including certain NGOs at Committee sessions,<sup>216</sup> thereby widening the scope of the examination.<sup>217</sup> Both the States Parties' reports to the Committee on the Right of the Child and the Committee's *Concluding Observations* are made publicly available, to the extent that the Committee's final reports have been described as its 'jurisprudence'.<sup>218</sup> In contrast the reports submitted to the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>219</sup> are confidential.<sup>220</sup> As regards compliance with EU Council Directive 94/33/EC provisions were to be in force by 22 June 1996, whilst periodic reports on their practical implementation need to be submitted to the European Commission.<sup>221</sup>

<sup>212</sup> See [http://www.ilo.org/public/english/standards/norm/sources/handbook/hb5.htm#rep\\_rats](http://www.ilo.org/public/english/standards/norm/sources/handbook/hb5.htm#rep_rats).  
<sup>213</sup> CRC, Arts. 43, 44; Protocol 'On the Sale of Children', Art. 12.

<sup>214</sup> Art. 45(a) of the CRC, 'The Committee may invite [...] other competent bodies, enabling participation of some 70 NGO coalitions, see <http://www.unchr.ch/html/menu2/6/crcdod.htm>.

<sup>215</sup> Such as Newell, P. and G. Lansdown, Eds. (1994). *UK Agenda for Children: a systematic analysis of the extent to which law, policy and practice in the UK complies with the principles and standards contained in the UN Convention on the Rights of the Child*. London, Children's Rights Development Unit. p. 329, and *Kinderrechtencollectief* (1997, updated 1999). *Children's Rights as a Mirror of Dutch Society; NGO Report on the Implementation of the UN-Convention on the Rights of the Child in the Netherlands*. (Translators, M. Piggott and S. Alexander) Amsterdam, Kinderrechtencollectief. Arts. 44, 45.

<sup>217</sup> See Van Bueren, G. (1995). *The International Law on the Rights of the Child*.

<sup>218</sup> Cohen, C. P. and S. Kilbourne (1998). 'Jurisprudence of the Committee of the Convention on the Rights of the Child: A Guide for Research and Analysis.' *Michigan Journal of International Law*, Spring 1998, pp. 633-728.

<sup>219</sup> Legal body of twenty independent members, established in 1926, responsible for the examination of the compliance by ILO member States with Conventions and Recommendations, see <http://www.ilo.org/ilolex/english/ceacre.htm>.

<sup>220</sup> Communication from the ILO Child and Forced Labour Section, 26/08/2002.

<sup>221</sup> Art. 17(3-5).



#### 5.5.1.1. The United States

##### *International obligations*

Member States of the U.S. need to comply both with federal legislation<sup>222</sup> and with any international treaties ratified by the U.S.<sup>223</sup> However, that does not apply to either the *Minimum Age Convention* or the *CRC*, which still await ratification. As mentioned earlier, the only International Instruments relating to children the U.S. has ratified are the *ILO Worst Forms of Child Labour Convention* and the two Optional Protocols to the *CRC*. In addition, the U.S. has undertaken to implement the *Stockholm Agenda for Action*.

Despite the participation of the United States in the two world conferences on Commercial Sexual Exploitation of children at Stockholm and Yokohama,<sup>224</sup> the United States has failed to formulate a national plan of action to combat the commercial sexual exploitation of children.<sup>225</sup> Activities aimed at combating CSEC are as yet

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<sup>222</sup> States have the constitutional power of passing stricter child labour provisions than the federal ones, therefore where stricter, the standard of the state where a child is in employment prevails, FLSA, s. 218; 29 C.F.R. ss 570.50(a), 570.129.

<sup>223</sup> The relationship between federal and state law has been cited as an obstacle to the ratification of multilateral human rights treaties, Stentzel, L. L. II. (1990). 'Federal-State Implications of the Convention'. Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law. C. Price Cohen and H. A. Davidson, American Bar Association Center on Children and the Law and Defense for Children International-USA, p. 57. According to the Supremacy Clause of the Constitution (Art. VI, §2) treaty laws and federal laws would be of equal weight. It has been argued that a limited number of reservations or declarations would be needed only where U.S. provisions differ from those of the CRC, Limber, S. P. and B. L. Wilcox (1996). 'Application of the U.N. Convention on the Rights of the Child to the United States.' American Psychologist vol. 51(12), December 1996, pp. 1247, 1250, whilst the state-federal complication of the 'adoption of a treaty by central government [which would be] binding on its constituent units for international law purposes' could be resolved by a 'federal-state' clause, Stentzel, L. L. II (1990). 'Federal-State Implications of the Convention', p. 57.

<sup>224</sup> "The United States is very proud of its record of addressing the commercial sexual exploitation of children at both the federal and state levels. Even prior to the Stockholm Conference, all of our 50 states and territories had laws outlawing child pornography, prostitution, and exploitation, Malcolm, J. G. (Deputy Assistant Attorney General Criminal Division, United States Department of Justice) (2001). *Opening Session Statement*. Second World Congress on the Commercial Sexual Exploitation of Children, Yokohama, December 17-20, 2001 [http://www.usdoj.gov/criminal/ceos/2WC\\_Opening\\_Statemt.pdf](http://www.usdoj.gov/criminal/ceos/2WC_Opening_Statemt.pdf), p. 2.

<sup>225</sup> Ecpat International (2001). *Five Years after Stockholm; The Fifth Report on the Implementation of the Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, 28 August 1996*. Bangkok, Ecpat International. <http://www.ecpat.net>, pp. 67-68, confirmed by Ecpat

limited to the publication of reports of prostitution and trafficking of children,<sup>226</sup> which are all due to efforts by NGOs.<sup>227</sup> In contrast to all the other regional consultations conducted in connection with the Stockholm Agenda for Action, which stressed the importance of the CRC and its effective implementation in combating CSEC, the Convention has been marginalised by the North American groups.<sup>228</sup> As to the Instruments the U.S. has ratified,<sup>229</sup> it was claimed, that neither the *Worst Forms of Child Labour Convention*<sup>230</sup> nor the two Optional Protocols to the CRC, would affect U.S. practices.<sup>231</sup> However, the complacent attitude of the U.S. Government has been questioned. For instance, a comment from the Tripartite Advisory Panel on International Labor Standards, that no change in U.S. practices would be necessary, has been challenged by Human Rights Watch.<sup>232</sup> Even within the U.S. Administration,

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International (2001-2002). *6th ECPAT Report on the Implementation of the Agenda for Action against the Sexual Exploitation of Children*. <http://www.ecpat.net/eng/index.asp>.  
<sup>226</sup> Ecpat International (2001). *Five Years after Stockholm; The Fifth Report on the Implementation of the Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, 28 August 1996*, p. 69.  
<sup>227</sup> Communication from the Executive Director of Ecpat-USA, 19<sup>th</sup> May 2003.

<sup>228</sup> 'The U.S. and Mexican proposals ignored it altogether', Ecpat International (2001-2002). *Ecpat Report on the Implementation of the Agenda for Action against the Commercial Sexual Exploitation of Children (2001-2002)*. <http://www.ecpat.ent>, p. 19. Also; "No one in this country, even teachers, people who work with youth, empowerment, etc. talk about the CRC or the Optional Protocol," communication from the Executive Director of Ecpat-USA, 20/05/2003.

<sup>229</sup> 'Ratification of New York Treaties against the Sale, Trafficking, and Prostitution of Children and against the Use of Children in Combat' (Senate - June 21, 2002); ratified 23/12/2002.

<sup>230</sup> 'Current United States law and practice satisfy the requirements of Convention No. 182. Ratification of this Convention, therefore, should not require the United States to alter in any way its law or practice in this field' *Removal of Injunction of Secrecy-Treaty Document No. 106-5 (Senate - August 05, 1999)*, Congressional Record S10533.

See also comment from the Tripartite Advisory Panel on International Labor Standards: 'after a thorough legal review, it has been determined that ratification of Convention 182 would not in any way require a change in current United States law and practice'. Yet it is applicable to cases of juvenile prostitution and trafficking of children to the U.S., both which are known to occur, see e.g.

<http://www.stopchildlabor.org/USchildlabor/childlaborUS.htm>.

<sup>231</sup> DECLARATION

(2) except as described in the reservation in section 2--

(A) 'Current United States law, including the laws of the States of the United States, fulfils the obligations of the Protocol for the United States, and (B) accordingly, the United States does not intend to enact new legislation to fulfil its obligations under the Protocol, Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography--Treaty Document No. 106-37B -- (Senate - June 18, 2002).

<sup>232</sup> 'That there would be no need for the U.S. government to formally consult with worker and employer organizations to identify, where the worst forms of child labor exist (as required by Article 4(2)) because "[e]mployer and worker organizations, along with the general

its has been recognised, that present practices are inadequate, as shown by a Department of Justice estimate of the extent of CSEC in the U.S.<sup>233</sup> Neither the ratification of the ILO Convention nor the Optional Protocols has received any attention in the California Congress. In addition, any publicity concerning the ratification of the optional Protocol has been minimal among NGOs engaged in combating the sexual and economic exploitation of children.<sup>234</sup>

*Comparison of domestic law with provisions of the CRC*

The failure by the U.S. to accede to the CRC has on several occasions motivated American lawyers to compare domestic law with the provisions of the CRC.<sup>235</sup> With a few notable exceptions, the contributors to a 1990 collection of essays, edited by Cohen and Davidson, concluded that ratification of the CRC would advance the cause of children. It was argued, for instance, that serious shortcomings in U.S. social policy has resulted in deprivation, lack of basic health coverage and a crisis in education, resulting in the 'cultural illiteracy' of many young people.<sup>236</sup> Although 'U.S.

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public, have regular access to the Department of Labor and other government agencies," *Report of the Tripartite Advisory Panel on International Labor Standards*, p. 20, cited by Human Rights Watch, <http://www.hrw.org/reports/2000/fmwkrk/fmwkrk006-06.htm>, footnote 1.

<sup>233</sup> "At least 100,000 children involved in the sex trade in the United States in any given year," quoted in the Senate on the occasion of acceptance of the Optional Protocols, 'Ratification of New York Treaties against the Sale, Trafficking, and Prostitution of Children and against the Use of Children in Combat' -- (Senate - June 21, 2002); See also Reeves, T. 'Harvest of Danger: The Child Farmworker in the United States.' *Human Rights Brief: A Legal Resource for the International Human Rights Community* vol. 8(2), <http://www.wcl.american.edu/hrbrief/08/2childfarmwork.cfm> concerning the failure of U.S. labour law to protect children working in agriculture.

<sup>234</sup> With the exception of Ecpat-USA, the websites of leading NGOs in the field, such as the Child Labor Coalition, and Children of the Night, make no mention of the ratification of the Optional Protocol 'On the Sale of Children' (last visited 21/05/2003).

<sup>235</sup> Cohen, C. and Davidson, Eds. (1990). *Children's Rights in America: UN Convention on the Rights of the Child compared with United States Law*. Washington, American Bar Association; American Bar Association (1998). 'ABA Briefing Paper: Project on the U.N. Convention on the Rights of the Child.' *Georgetown Journal on Fighting Poverty*, Summer, 1998, pp. 241-249; Limber, S. P. and B. L. Wilcox (1998). 'Application of the U.N. Convention on the Rights of the Child to the United States'.

<sup>236</sup> Bitensky, S. H. (1990). 'Educating the Child for a Productive Life'. *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*. C. Price Cohen and H. A. Davidson, American Bar Association Center on Children and the Law and Defense for Children International-USA., p. 167. For a definition of cultural literacy, see Hirsch, E. D. (1987). *Cultural literacy: what every American needs to know*. Boston, Houghton Mifflin, p. xiii.

education law was found to be largely consistent with Arts. 28 and 29 of the *CRC*, the paper on education draws attention to several legal obstacles, such as the lack of 'recognition of a right to education', which might conceivably be used to exclude undocumented children. Bitensky also argued that ratification would promote the 'perception of the U.S. as a nation fully-committed to educating its children'.<sup>237</sup>

The contribution to the volume by Cohen and Davidson on the subject of economic exploitation claimed, that ratification would not make any difference, as U.S. child labour legislation already met the standards of the *CRC*.<sup>238</sup> This view ignores the fact, that child work in the entertainment industry, agriculture and newspaper delivery is not subject to any restrictions, whilst also glossing over the sexual exploitation of juveniles<sup>239</sup> and abuses in agriculture.<sup>240</sup> The author discussing the compatibility of American provisions in the field of 'rest and leisure' in the same volume, which acknowledged the interdependence of Arts. 28, 31 and 32,<sup>241</sup> reported U.S. compliance with the *CRC* concerning leisure time and night-rest.<sup>242</sup> In this case 'leisure' was conceived as a function of the available leisure activities, such as access

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<sup>237</sup> Bitensky, S. H. (1990). 'Educating the Child for a Productive Life', p. 183.

<sup>238</sup> Boskey, J. B. (1990). 'Preventing Exploitation of the Child'. *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*. C. Price Cohen and H. A. Davidson, American Bar Association Center on Children and the Law and Defense for Children International-USA. p. 314.

<sup>239</sup> Weisberg, D. K. (1985). *Children of the Night: a study of adolescent prostitution*. Lexington, Lexington Books; Flores, R. (1996). *Overviews of Child Prostitution: Child Prostitution in the United States*. Forced Labour: the Prostitution of Children; Symposium co-sponsored by the US Department of Labor, Washington US Department of Labor, [http://www.usis.usemb.se/children/Child\\_Labor3.PDF](http://www.usis.usemb.se/children/Child_Labor3.PDF).

<sup>240</sup> Taylor, R. B. (1973). *Sweatshops in the sun: child labour on the farm*. Boston, Beacon Press; Human Rights Watch (2000). *Fingers to the Bone: United States Failure to Protect Child Farmworkers*, ed. Lee Tucker. Human Rights Watch. <http://www.hrw.org/reports/2000/fmwkr/>.

<sup>241</sup> Guggenheim, M. (1990). 'The Child's Access to Diverse Intellectual, Artistic and Recreational Resources'. *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*. C. Price Cohen and H. A. Davidson, American Bar Association Center on Children and the Law and Defense for Children International-USA, pp. 290, 295.

<sup>242</sup> Guggenheim, M. (1990). 'The Child's Access to Diverse Intellectual, Artistic and Recreational Resources', p. 295, citing N.Y. Ed. Law §§ 3215-3230 which prohibits work for sixteen-year olds between midnight and 6 a.m. See, however, Section 7.6.2. 'Night rest'.

to television or engaging in organised leisure pursuits.<sup>243</sup> However, the paper did not ask, whether the material on offer was of social and cultural benefit to the child<sup>244</sup> nor did it comment on the highly commercialised nature of many of the TV programmes.<sup>245</sup>

#### *Reports to Treaty Bodies*

The first U.S. report to the CEACR (ILO Committee of Experts on the Application of Conventions and Recommendations), submitted at the end of year 2002, was preceded by a report from the International Confederation of Free Trade Unions (ICFTU). The ICFTU report drew attention to the extent of illegal child labour in the U.S., the underfunding of the labour inspectorate and levels of fines too low to deter abuse, based on a Federal Government survey from 1997.<sup>246</sup> The Government questioned the validity of the ICFTU report of the estimates of children working illegally, due to lack of high-quality data for children below fourteen. Apart from the Government's response to the ICFTU's allegations, the report provides an overview of the existing child labour and health and safety legislation. The CEACR criticised U.S. practice of legally permitting children to working in agriculture at younger ages, in more hazardous occupations, and for longer periods than in other industries. Another criticism from the CEACR concerned the fact, that children do not fall under the protection of the 'hazardous occupations orders' relating to the employment of children younger than sixteen, when working on farms owned by their parents.<sup>247</sup>

#### **5.5.1.2. The Netherlands**

Ratification of the CRC occurred relatively late in the Netherlands, because of the Government's aspiration to include the Caribbean parts of the Kingdom, and also

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<sup>243</sup> Guggenheim, M. (1990). 'The Child's Access to Diverse Intellectual, Artistic and Recreational Resources', p. 298.

<sup>244</sup> CRC, Art. 17(a).

<sup>245</sup> Compare Chapter 6, section 6.4.1.1.

<sup>246</sup> 11/09/2001, see also the First Annual Report by Non-Governmental Organizations, [http://www.stopchildlabor.org/aboutus/ngoreport.htm#ngo\\_postion](http://www.stopchildlabor.org/aboutus/ngoreport.htm#ngo_postion).

<sup>247</sup> Compare the 1993 amendments to the Labor Code of California, which prohibit dangerous work on the family farm, Chapter 7, footnote 48.

because of the opposition towards the proposed reservations,<sup>248</sup> which led to repeated debates. In the accompanying explanatory memorandum a detailed description is provided of the articles of the *CRC*, many of which reaffirm comparable provisions in other human rights Instruments ratified by the Netherlands, or addressed by the Dutch Constitution.<sup>249</sup> On ratification the *CRC* became part of Dutch law, as international treaties take precedence over national law.<sup>250</sup> In addition to reports to the Committee on the Rights of the Child the Government needs to submit reports to the ILO's CEACR concerning the *Minimum Age Convention* and the *Labour Inspection Convention*.

By the end of the year 2002 two reports have been submitted to the Committee on the Rights of the Child by the Netherlands, supplemented by two independent reports from the Dutch NGO Coalition for Children's Rights.<sup>251</sup> The Initial Report<sup>252</sup> gave rise to a number of critical observations and comments in the area of child work, urging the State Party to raise the age of recruitment in the armed forces.<sup>253</sup> In addition, concern was expressed about the lack of policies to address the commercial sexual exploitation of children, in particular of unaccompanied minor asylum-seekers

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<sup>248</sup> Arts. 26, 'independent right to social security', 37(c), '... every child deprived of liberty shall be separated from adults ...', and 40 '... In the presence of legal or other appropriate assistance ...', in case of minor offences, *Goedkeuringswet inzake de Rechten van het Kind*, Rijkswet van 24 november 1994, houdende goedkeuring van het op 20 november 1989 te New York tot stand gekomen Verdrag inzake de rechten van het kind, p. 1.

<sup>249</sup> For instance, Art. 2, 'the non-discrimination principle' compared to ICCPR, Art. 2(1), ICESCR Art. 2(2), and Art. 1 of the Dutch Constitution.

<sup>250</sup> See Arts. 93 and 94: 'Verdrag boven wetten' of the Dutch Constitution, <http://www.eur.nl/frg/grondwet.html>, see also Art. 26, *Vienna Convention on the Law of Treaties* (1969).

<sup>251</sup> Kinderrechtencollectief (1997, updated 1999). *Children's Rights as a Mirror of Dutch Society; NGO Report on the Implementation of the UN-Convention on the Rights of the Child in the Netherlands*. ; and Kinderrechtencollectief (2002). *Opgroeien in the Lage Landen: Kinderrechten in Nederland: Tweede rapport van het Kinderrechtencollectief over de implementatie van het VN-Verdrag inzake de Rechten van het Kind in Nederland*. [http://www.minjust.nl/b\\_organ/naps/nieuws/opgroeien\\_in\\_de\\_lage\\_landen.htm](http://www.minjust.nl/b_organ/naps/nieuws/opgroeien_in_de_lage_landen.htm).

<sup>252</sup> Ministry of Foreign Affairs (1997). *Initial reports of States Parties due in 1997, Addendum, The Netherlands*. s'Gravenhage.

<sup>253</sup> [http://www.unhcr.org/Refugees/UN\\_Docs/CRC/Netherlands.htm](http://www.unhcr.org/Refugees/UN_Docs/CRC/Netherlands.htm). Committee on the Rights of the Child (1999). *CRC/C/15/Add.114. Netherlands (Concluding Observations/Comments)*. Geneva, § 24.

later found to be involved in the sex industry.<sup>254</sup> An issue raised in connection with the fields of education and leisure, concerned the inadequacy of human rights education.<sup>255</sup> The second State report mentions the need for implementing legislation before the Netherlands is a position to ratify the *Optional Protocol on the 'Sale of Children'*.<sup>256</sup> Also, a Bill has been proposed prohibiting discrimination on the grounds of age,<sup>257</sup> unless such discrimination is justifiable in view of a legitimate aim, and the means used to achieve that aim are proportionate<sup>258</sup>. An area in which such an Act is expected to benefit all workers, including young employees, is the prohibition of intimidation on account of age.<sup>259</sup> In addition, the Netherlands Government also informed the Committee of the ratification of the *Worst Forms of Child Labour Convention*<sup>260</sup> and provided an overview of the extent of child work in the Netherlands.<sup>261</sup> With respect to Art. 34, a *National Plan of Action on Child Sex Abuse*

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<sup>254</sup> Committee on the Rights of the Child (1999). *CRC/C/15/Add.114. Netherlands (Concluding Observations/Comments)*, § 28. See Ecpat-NL (1999-2001). *Commerciële uitbuiting van kinderen*. Nijmegen, Ecpat-NL. <http://www.xs4all.nl/~ecpat/Binnenwerk.pdf>, p. 13, and Calcetos-Santos *Report on the mission of the Special Rapporteur to Belgium and the Netherlands on the issue of commercial sexual exploitation of children* (30 November-4 December 1998), *E/CN.4/2000/73/Add.1*, §§ 116, 120, 122.

<sup>255</sup> Committee on the Rights of the Child (1999). *CRC/C/15/Add.114. Netherlands (Concluding Observations/Comments)*, § 21.

<sup>256</sup> Kingdom of the Netherlands Inter-ministerial Working Group (2002). *Second Periodic report by the Kingdom of the Netherlands on the Implementation of the UN Convention on the Rights of the Child*. The Hague, p. 4.

<sup>257</sup> 'Equal treatment on the basis of age in employment, the professions and professional education' Act, as proposed to the Second Chamber, 28170, occasioned by the entering in force of EU Directive no. 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation.

<sup>258</sup> Kingdom of the Netherlands Inter-ministerial Working Group (2002). *Second Periodic report by the Kingdom of the Netherlands on the Implementation of the UN Convention on the Rights of the Child*, p. 8.

<sup>259</sup> See also van Berkel, E. v., M. Cornelissen, et al. (2002). *Leeftijd & Arbeid; De OR aan zet bij inzet van alle leeftijden*. Utrecht, LBL, expertisecentrum leeftijd en maatschappij. <http://www.leeftijd.nl/docs/ORaanZet.pdf>.

<sup>260</sup> Kingdom of the Netherlands Inter-ministerial Working Group (2002). *Second Periodic report by the Kingdom of the Netherlands on the Implementation of the UN Convention on the Rights of the Child*, p. 54.

<sup>261</sup> Kingdom of the Netherlands Inter-ministerial Working Group (2002). *Second Periodic report by the Kingdom of the Netherlands on the Implementation of the UN Convention on the Rights of the Child*, p. 55, based on the National Survey of Schoolchildren for 2000-2001, National Institute for Information on Consumer Budgets (2001). *Nationaal Scholieren Onderzoek 2000/2001*, <http://www.nibud.nl/docs/nso2002.pdf>, pp. 27-37, and studies by the Labour Inspectorate, and Labour Inspectorate's enforcement policy.

(NAPS) has been formulated in accordance with the Stockholm Agenda<sup>262</sup>, aiming at early identification of child prostitution with a view of rehabilitation.<sup>263</sup>

An issue mentioned in the Government's report to the Committee on the Rights for the Child regarding the right 'to education' concerns the fact that asylum seekers from five to sixteen have the same right to free schooling as Dutch children.<sup>264</sup> However, the Report is silent on a concern pointed out in an alternative report by the NGO Coalition in connection with the right to play and leisure. It signals a lack of public space for children to socialise and play, which means that a quarter of all children never plays outside.

The Dutch and Aruban reports have been considered together in January 2004 by the Committee on the Rights of the Child. The second periodic report of the Kingdom of the Netherlands,<sup>265</sup> was considered by the Committee on the Rights of the Child with respect to two of the regions constituting the Kingdom, the Netherlands and the Island of Aruba in January 2004.<sup>266</sup> The Committee regretted the way the statistics were aggregated into age groups, which made it virtually impossible to determine the

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<sup>262</sup> *Stockholm Declaration and Agenda for Action, the Challenge* (1996).

<sup>263</sup> Kingdom of the Netherlands Inter-ministerial Working Group (2002). *Second Periodic report by the Kingdom of the Netherlands on the Implementation of the UN Convention on the Rights of the Child*, Ministerie van Justitie, D. P., Jeugd en Sanctiebeleid (2001). *Het Nationaal Actieplan 'Aanpak seksueel misbruik van kinderen*. Den Haag, Ministerie van Justitie, p. 57. The NAPS project has been presented to the Second Chamber on 19<sup>th</sup> April 2000. Project teams comprise representatives from several ministries, police, municipalities, and social assistance organisations, including NGOs, Kinderrechtencollectief (2002). *Opgroeien in the Lage Landen: Kinderrechten in Nederland: Tweede rapport van het Kinderrechtencollectief over de implementatie van het VN-Verdrag inzake de Rechten van het Kind in Nederland*, p. 14.

<sup>264</sup> Kingdom of the Netherlands Inter-ministerial Working Group (2002). *Second Periodic report by the Kingdom of the Netherlands on the Implementation of the UN Convention on the Rights of the Child*, p. 42. However, the NGO Coalition points out that asylum seekers do not qualify for income support or housing, making it virtually impossible to enjoy the right. Kinderrechtencollectief, *Opgroeien in the Lage Landen: Kinderrechten in Nederland: Tweede rapport van het Kinderrechtencollectief over de implementatie van het VN-Verdrag inzake de Rechten van het Kind in Nederland*, p. 65.

<sup>265</sup> Second Periodic Reports of State Parties due in 2002: Netherlands, 5 June 2003: *CRC/C/117/Add.1* and initial report for Aruba, *CRC/C/117/Add.2*, 17 June 2003; the initial report of the third region, the Netherlands Antilles, *CRC/C/61/Add.4*, had been submitted on 4 October 2001.

<sup>266</sup> United Nations, Committee on the Rights of the Child (2004). *Concluding Observations: The Kingdom of the Netherlands (Netherlands and Aruba): Aruba, Netherlands, CRC/C/15/Add.227*, 26 February 2004.



situation of children under eighteen.<sup>267</sup> The Committee reiterated its concerns over the persisting discrimination, directed in particular at ethnic minority children, refugees and asylum-seeking children, recommending that the State Party should review the *Aliens Act*, 2001, and adhere to international standards.<sup>268</sup> The Committee recommended, that Aruba should adopt the National Ordinance on Compulsory Education without further delay, and that both the Netherlands and Aruba should develop a National Plan of Action against Commercial Sexual Exploitation as agreed at the First and Second World Congresses Against Commercial Sexual Exploitation of Children.<sup>269</sup>

*Netherlands obligation to formulate a Plan of Action on SCEC*

Despite the January 2004 recommendation by the Committee on the Rights of the Child to the Netherlands to formulate a Plan of Action on Commercial Exploitation of Children, such a Plan has been formulated for the Netherlands in Europe.<sup>270</sup> However, the implementation of the Dutch National Plan for Action has been found wanting on a number of points by the organisation aiming at the elimination of child sexual exploitation, ECPAT. An important criticism concerns the approach based on discrete projects,<sup>271</sup> which once completed, will not be repeated.<sup>272</sup> In addition, the implementation of measures for rehabilitation and reintegration of former juvenile prostitutes was regarded as inadequate, whilst no review mechanisms have been created for the evaluation of the projects. In addition, the Dutch National Plan of Action did not make use of 'experiential youth' in the implementation phase, despite the

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<sup>267</sup> United Nations, Committee on the Rights of the Child, (2004). *Concluding Observations: The Kingdom of the Netherlands (Netherlands and Aruba): Aruba, Netherlands, CRC/C/15/Add.22*, § 24.

<sup>268</sup> United Nations, Committee on the Rights of the Child (2004). *Concluding Observations: The Kingdom of the Netherlands (Netherlands and Aruba): Aruba, Netherlands, CRC/C/15/Add.227*, §§ 30, 54.

<sup>269</sup> See footnotes, 148 and 262, this Chapter.

<sup>270</sup> Ministerie van Justitie, Directie Preventie, Jeugd en Sanctiebeleid (Oktober 2001). *Het Nationaal Actieplan 'Aanpak seksueel misbruik van kinderen*. Den Haag, Ministerie van Justitie.

<sup>271</sup> Ministerie van Justitie, *Het Nationaal Actieplan 'Aanpak seksueel misbruik van kinderen*, pp. 22-23.

<sup>272</sup> Telephone conversation with the campaign manager of ECPAT-NL, 06/05/2003.

recommendation from the Stockholm Agenda to invite participation from young people.<sup>273</sup>

*Scrutiny by the ILO's Committee of Experts*

Several provisions of the 1995 Dutch *Working Times Act (AtW)*<sup>274</sup> were criticised by the 2001 report from ILO's CEACR,<sup>275</sup> namely that the prohibition of child labour did not apply to activities within the terms of an agreement, despite the fact that the *Convention* applies to all work. Also, no measures had been established to protect children from work that did not involve a contract, such as the work of street children. Another criticism concerned the fact that young offenders between twelve and eighteen may be subject to alternative sanctions in the form of a work project of an educational nature, whilst working is by Art. 6 of the *Convention* permitted to persons over fourteen only. In addition, the *AtW* lacks a provision to compel employers to keep a register of employees under eighteen.<sup>276</sup> The CEACR additionally urged the Government to raise the minimum age to sixteen.<sup>277</sup> As regards the European system of rights, neither Dutch nor Aruban citizens have brought any cases to the European Court relating to Arts. 4 of the *Convention* or 2 of the First Protocol. However, reports have been submitted to the Committee overseeing the European Social Charter and, in the case of the Netherlands, also in respect of *Directive* 94/33/EC. The European Committee of Social Rights voiced a number of criticisms on the Netherlands thirteenth report on the implementation of the Social Charter concerning Arts. 7(3, 5, 6) and a question regarding Art. 7(10). In the view of the Committee the mandatory rest period during school holidays for children still attending school was insufficient to give them

<sup>273</sup> Ministerie van Justitie, *Het Nationaal Actieplan 'Aanpak seksueel misbruik van kinderen* . . . pp. 34-35, see Point 6(a) "Promote the participation of children, including child victims . . ." World Congress Against Commercial Sexual Exploitation of Children, *Declaration and Agenda for Action*.

<sup>274</sup> See Chapter 7, Section 7.3.2.1.

<sup>275</sup> <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

<sup>276</sup> The obligation is, however, part of the RI&E requirement of the (*Arbowet*) *Working Conditions Act*, see Chapter 7, section 7.3.2.3, Netherlands.

<sup>277</sup> The age of entry into labour of sixteen, *AtW*, Ch.-3, -Art.-1:2-1, is subject to several exemptions, see Table 7.2, 'Hours of Work'.

the full benefit of the education. Also, fifteen year-old newspaper deliverers are able to start work at 6 a.m., which may have a detrimental effect on a child's schooling. Secondly, the minimum youth wage was a fraction of that of adult workers, whilst the protection for young people in vocational training was inadequate.<sup>278</sup> In addition, the Committee requested more information concerning provisions for homeless children.<sup>279</sup>

As to the obligations of the country towards the implementation of Council Directive 94/33/EC, the *Transposal Report*<sup>280</sup> points out a number of shortcomings. To begin with, the *Working Times Act* 1995 lacks a mechanism to ensure, that the cumulative working time of a child employed by several employers, keeps within the period indicated in the *Directive*.<sup>281</sup> Nor does the *Working Times Act* contain any provisions for annual holidays,<sup>282</sup> or for work in the event of *force majeure*.<sup>283</sup> In addition, the general regulation for periodic health assessments does not mention young workers specifically.<sup>284</sup>

#### 5.5.1.3. Aruba

As Aruba did not comply with the requirements of accession to the CRC by the Kingdom of the Netherlands until January 2001,<sup>285</sup> its first periodic report was submitted in January 2003, and has been considered in January 2004. So far

<sup>278</sup> Council of Europe - Economic and Social Committee (2000). *Thirteenth report on the implementation of the European Social Charter submitted by the Government of the Netherlands (period 1 January 1995 to 31 December 1998: Article 7 paras. 3, 5, 6 and 10, (period 1 January 1993 to 31 December 1998): Article 7 paras. 1, 2, 4, 7, 8 and 9; Cycle XV-2; RAP/Cha/NE/XII(2000)*. Strasbourg.  
<http://www.humanrights.coe.int/cseweb/FR/PDF/netherlands.pdf>, pp. 19-21.

<sup>279</sup> Council of Europe - Economic and Social Committee, *Thirteenth report on the implementation of the European Social Charter submitted by the Government of the Netherlands (period 1 January 1995 to 31 December 1998: Article 7 paras. 3, 5, 6 and 10, (period 1 January 1993 to 31 December 1998): Article 7 paras. 1, 2, 4, 7, 8 and 9; Cycle XV-2; RAP/Cha/NE/XII(2000)*, p. 79.

<sup>280</sup> See the *Transposal Report*, Commission of the European Union, *Transposal of Directive 33/94/EC Concerning the Protection of Young People in the 15 Member States of the European Union*. European Union. [http://europa.eu.int/comm/employment\\_social/social/labour/3394\\_en.pdf](http://europa.eu.int/comm/employment_social/social/labour/3394_en.pdf), pp. 51-57.

<sup>281</sup> Art. 8(4).

<sup>282</sup> Art. 11.

<sup>283</sup> Art. 13.

<sup>284</sup> Art. 9(3). The *Transposal Report* refers to Art. 24 of the *Working Times Act* instead of the *Working Conditions Act* 1980, which has been superseded by the *Working Conditions Act* 1998 (*Arbowet*).

compulsory education has not been implemented,<sup>286</sup> whilst the state of education was described as 'deplorable' by the incoming Minister of Education'.<sup>287</sup> However, a national action plan for children's rights has been drafted<sup>288</sup> and all children of school age, including undocumented young people, were reported to have been registered.<sup>289</sup>

Aruba continued to be a Party to the Instruments ratified by the Netherlands before 1986, when achieving *status aparte* (separate status) within the Kingdom of the Netherlands.<sup>290</sup> The 1990s Netherlands reports to the Committees of the *ICESCR* and *CEDAW* both contain sections on Aruba, which are relevant to the position of children. For instance, the concluding observations by the Committee on the Elimination of Discrimination Against Women expresses concern about the status of women in Aruba: 'gender equality is far from being achieved and gender-based stereotypes persist',<sup>291</sup> a point also made by the Committee on Economic, Social and Cultural Rights.<sup>292</sup> As Aruba's laws and regulations were seriously outdated, the State was urged to bring its laws and regulations up to date in order to ensure full compliance with the *ICESCR*.<sup>293</sup>

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<sup>285</sup> Official acceptance on 17/01/2001.

<sup>286</sup> Telephone conversation with a spokeswoman of the Centrale Wetgeving en Juridische Zaken (Direction Legislation and Legal Affairs) on 27/08/2004.

<sup>287</sup> Refunjol: "Toestand scholen deplorabel," *Amigoe*, 14/02/2002.

<sup>288</sup> *Amigoe*, 25/05/2002.

<sup>289</sup> 'Actie ga naar school', *Amigoe*, 02/11/2002.

<sup>290</sup> Letter from the Permanent Representative of the Netherlands, dated 24 December 1985, registered at the Secretariat General on 3 January 1986, see also Appendix 6, Aruba, Location and Nature of Relationship with the Netherlands.

<sup>291</sup> Office of the High Commissioner for Human Rights (2001). *Second and third periodic reports; Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Netherlands*. 31/07/2001. U.N. Doc. A/56/38, paras. 185-231. (*Concluding Observations/Comments*).  
[http://www.unhchr.ch/tba/doc.nsf/\(Symbol\)/f71a08bfd894a15ac1256acc0053f4bd?OpenDocument](http://www.unhchr.ch/tba/doc.nsf/(Symbol)/f71a08bfd894a15ac1256acc0053f4bd?OpenDocument), §227.

<sup>292</sup> United Nations - Committee on Economic - Social and Cultural Rights 'Concluding observations: Netherlands; E/C.12/1/Add.25.' §201.

<sup>293</sup> United Nations - Committee on Economic - Social and Cultural Rights 'Concluding observations: Netherlands; E/C.12/1/Add.25.' §209.

Aruba is expected to submit reports with respect to a number of other Conventions, such as the ILO's *Minimum Age* and *Inspection Conventions*.<sup>294</sup> Despite the commitment to raise the age of entry into labour progressively, when the economy permits such a course of action,<sup>295</sup> young people are still permitted to start work at fourteen. The CEARC has been informed that younger children have also found to be at work during school hours, an issue of concern to the Aruba Teachers' Union, which is unable to take any action, as education is still not compulsory.<sup>296</sup> Aruba's record concerning the *Labour Inspection Convention* has been criticised on several points in the most recent report by the CEACR. To begin with, inspectors work in the morning and early afternoon only and the number of inspections is too low in relation to the number of workplaces,<sup>297</sup> whilst infringements of labour laws are not officially reported. Also, the levels of fines are too low, and inspectors are frequently prevented from overseeing the implementation of legal provisions in multinational enterprises. In addition, the CEACR questioned the validity of the statement by the Aruba government, that the lack of legal capacity of young people under twenty-one, which bars minors from entering into a labour agreement, would prevent illegal employment.<sup>298</sup> The Committee's comments on the Aruba's previous report to the *Minimum Age Convention* are, if possible, even more damning. Aruba's only legislation concerned with the work of young people, dates from 1952. None of the obligations

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<sup>294</sup> In 1986 Aruba became a separate State within the Kingdom, under the Charter, sharing constitutional status with the Netherlands and the Netherlands Antilles, see Appendix 8, <http://www.hri.ca/fortherecord1998/documentation/coredocs/hri-core-1-add66.htm>, §31.

<sup>295</sup> *Minimum Age Convention*, Art. 2(4).

<sup>296</sup> Repeated submissions by the Teachers' Union of Aruba, CEACR (1999-2002). *Comments made by the Committee of Experts on the Application of Conventions and Recommendations, to reports to the Minimum Age Convention 1973 (Aruba)*. Geneva, <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> 70<sup>th</sup>-72<sup>th</sup> sessions of the CEACR.

<sup>297</sup> The 1993 CEACR report mentions eleven inspectors. According to the Aruba Labour Inspection Office, the inspectorate consists of only three inspectors for the whole of the island (telephone conversation with a spokeswoman of the Aruba Labour Inspectorate, 8/08/2002).

<sup>298</sup> ILO (1999). *Report of the Committee of Experts on the Application of Conventions and Recommendations, on the Minimum Age Convention, Netherlands Aruba*. Geneva, ILO. <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

under the Convention had been fulfilled: first of all, several decrees announced in the 1950's labour ordinance have not materialised, nor had a list of hazardous occupations, prohibited to young people between fourteen and eighteen, been published.<sup>299</sup> In addition, the option of allowing children between twelve and fourteen to engage in light work after school, had not been incorporated in Aruban law.<sup>300</sup>

No Aruban delegation has attended either of the two World Congresses against Commercial Sexual Exploitation of Children. Aruba does not perceive CSEC as a matter for concern.<sup>301</sup> However, in view of the situation on other Caribbean States, it does not seem plausible, that Aruba has not experienced any problems, despite the constant influx of foreign tourists. No data are available concerning the State's nearest neighbouring islands, the Leeward Antilles.<sup>302</sup> However, CSEC occurs on several other Caribbean Islands, such as Trinidad and Tobago<sup>303</sup> and in the two countries geographically closest to Aruba, Venezuela and Colombia,<sup>304</sup> whilst instances of trafficking of children from less affluent States to Aruba have also been reported.<sup>305</sup>

## 5.6. To conclude

The various International Children's Rights Conventions and Labour Standards Instruments overlap to some extent, whilst drawing on each other. For instance, there

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<sup>299</sup> The only reference to young people in connection with work in an ordinance dating later than 1954, occurs in the *Veiligheidsverordening (Safety Ordinance)* 1991 GT 22 "A person below the age of 18 may not operate hoists, including scaffolding apparatus, or give signals to the person operating such apparatus." (Art. 27(10)).

<sup>300</sup> ILO (1999-2000). *Report of the Committee of Experts on the Application of Conventions and Recommendations, on the Minimum Age Convention, Netherlands Aruba*.

<sup>301</sup> Communication from the voluntary organisation 'Respeta Mi', engaged in the prevention of child physical and sexual abuse, 05/05/2003.

<sup>302</sup> Committee on the Rights of the Child (2002). *Concluding observations of the Committee on the Rights of the Child: Netherlands Antilles*. Geneva, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.186.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.186.En?OpenDocument), § 60.

<sup>303</sup> Ecpat International (2001). *Five Years after Stockholm; The Fifth Report on the Implementation of the Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, 28 August 1996*, p. 74.

<sup>304</sup> Ecpat International (2001). *Five Years after Stockholm; The Fifth Report on the Implementation of the Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, 28 August 1996*, p. 84.

<sup>305</sup> From the Dominican Republic, U.S. Department of State, I. I. P. (2001). *Excerpts: Western Hemisphere Segments of Human Trafficking Report*, <http://usinfo.state.gov/topical/global/traffic/01071205.htm>.

is a strong connection between the ILO *Minimum Age Convention* and the *CRC* as evident from the *CRC*'s drafting history and the similarity of the language used in the article concerned with the protection of children and young people from economic exploitation. Ratification of the various instruments has been uneven in the three states in the comparison. The U.S., and by implication, California, has acceded to the *Worst Forms of Child Labour Convention* and the Optional Protocols to the *CRC* on the assumption, that Federal and State provisions already conform to the standards. Measures taken by the Netherlands in response to criticism from the Committee on the Rights of the Child on the occasion of the first report are set out in detail in the second. In addition, attention is drawn to procedures modified in connection with the 1995 *Working Times Act*, such as the enforcement policy of the Labour Inspectorate. Ratification of the two Optional Protocols to the *CRC* awaits the adoption of implementing legislation, although the Netherlands has ratified the *Worst Forms of Child Labour Convention* announced in the report. Activists on the Island of Aruba have welcomed the Aruba's accession to the *CRC*, expecting, that it would encourage the Government to make improvements in the position of children and young people, for instance by implementing compulsory education. The second periodic report of the Kingdom of the Netherlands,<sup>306</sup> was considered by the Committee on the Rights of the Child with respect to two of the regions constituting the Kingdom, the Netherlands and the Island of Aruba in January 2004.<sup>307</sup> The Committee regretted the way the statistics were aggregated into age groups, which made it virtually impossible to determine the situation of children under eighteen.<sup>308</sup> The Committee reiterated its concerns over the

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<sup>306</sup> Second Periodic Reports of State Parties due in 2002: Netherlands, 5 June 2003: *CRC/C/117/Add.1* and initial report for Aruba, *CRC/C/117/Add.2*, 17 June 2003; the initial report of the third region, the Netherlands Antilles, *CRC/C/61/Add.4*, had been submitted on 4 October 2001.

<sup>307</sup> United Nations, Committee on the Rights of the Child (2004). *Concluding Observations: The Kingdom of the Netherlands (Netherlands and Aruba): Aruba, Netherlands, CRC/C/15/Add.227*, 26 February 2004.

<sup>308</sup> United Nations, Committee on the Rights of the Child (2004). *Concluding Observations: The Kingdom of the Netherlands (Netherlands and Aruba): Aruba, Netherlands, CRC/C/15/Add.22, § 24.*

persisting discrimination, directed in particular at ethnic minority children, refugees and asylum-seeking children, recommending that the State Party should review the *Aliens Act*, 2001, and adhere to international standards.<sup>309</sup> The Committee recommended, that Aruba should adopt the National Ordinance on Compulsory Education without further delay, and that both the Netherlands and Aruba should develop a National Plan of Action against Commercial Sexual Exploitation as agreed at the First and Second World Congresses Against Commercial Sexual Exploitation of Children.<sup>310</sup>

Observations from the ILO's CEACR to the State's report in connection with the *Minimum Age Convention* raised several criticisms, relating to the practical aspects of implementation. Clearly the State has in the past not gone to a great deal of effort to comply with its international obligations.

Despite the ratification of the *Worst Forms of Child Labour Convention* and the two *Optional Protocols* to the *CRC*, the U.S. still distances itself from norms that are beginning to 'constitute a set of yardsticks defining the good society'. In consequence it foregoes 'a part of the social process in their application and continuous testing'<sup>311</sup> by delaying ratification of Conventions, that demand greater commitment in domestic terms from States Parties than the *Worst Forms of Labour Convention* and the *Optional Protocols*. As child labour issues have been targeted somewhat half-heartedly in the U.S.,<sup>312</sup> one might conclude with Alston, that the U.S. like any other state 'cannot expect to be taken seriously, when it proclaims its attachment to children's rights in general'.<sup>313</sup> On the other hand most of Western Europe, including the Netherlands, have acceded to several children's rights conventions, leading to

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<sup>309</sup>United Nations, Committee on the Rights of the Child (2004). *Concluding Observations: The Kingdom of the Netherlands (Netherlands and Aruba): Aruba, Netherlands, CRC/C/15/Add.227*, §§ 30, 54.

<sup>310</sup> See footnote 262, this Chapter.

<sup>311</sup> Galtung, J. (1994). *Human Rights and the Western Tradition*. Polity Press, p 63.

<sup>312</sup> Concerted efforts to eradicate illegal child work were conducted in 1990 as 'Operation Child Watch' and 'Operation Salad Bowl' in 1998 only. <http://www.dol.gov/esa/media/press/whd/sfwh145.htm>. Civil fines are often not regarded as 'a severe financial deterrent' Lantos, T. (1992). 'The Silence of the Kids: Children at Risk in the Workplace.' p. 69.



legislative adjustments as well as a general change in attitudes within the European Union.<sup>314</sup> Although the Dutch child labour legislation was drafted before ratification of the *CRC* and the adoption of *Council Directive 94/33/EC*, it largely satisfies the requirements of both Instruments as well as those of the *ILO Minimum Age Convention*.

The next chapters provide a historical overview of the developments leading to the regulation of child labour in the societies being compared, followed by chapter giving a detailed account of the current provisions in the three States. Comparison between these two chapters gives some idea of the difference in approach towards the economic activities of children, occasioned by changing modes of thinking about young people.

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<sup>313</sup> Alston, P. (1989). 'Implementing Children's Rights: The Case of Child Labour.' p. 44.

<sup>314</sup> Sutton, D., S. Ek, *et al.* (1989). *Towards an EU Human Rights Agenda for Children*. Stockholm, International Save the Children Alliance - Europe Group, pp. 30-33.

## **6. A Historical Perspective of Child Labour in the three 'States'**

### **6.1. Introduction**

Whereas the previous chapters introduce the theoretical background to rights-based approaches to child welfare, laid down as *rights* in international instruments, this chapter covers the period, when protection from exploitation began to be seen as a right owed to children and young people. The history of the struggle against child labour in industrial societies, such as Britain and New England, has been told before. Therefore the thesis restricts itself to the 'States' under consideration. As industrialisation began much later in the 'States' being compared, the study concentrates on the period after 1850, which has been decisive for the development of the regulation of child labour. Generally it is possible to distinguish four phases in histories covering the subject in the industrial world, for instance in the treatment of the subject by Trattner and Vlieggeert.<sup>1</sup>

- Pre-industrial period before mid 18<sup>th</sup> century: children helping their parents in cottage industries - learning by doing.
- Industrial period: late eighteenth to late nineteenth century, with the exploitation of children reaching its peak.
- Period of struggle against child labour, leading to social reform through legislation that put children into schools thereby ending exploitation: 1870s to late 1930s.
- Consolidation period: 1930s to the present - a time to rejoice: child labour safely in the past and replaced by child employment with children attending school.

Although it has been acknowledged that this view is somewhat naïve, in particular in relation to the early period, as it was by no means as idyllic as sometimes

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<sup>1</sup> Trattner, W. I. (1970). *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*. Chicago, Quadrangle Books; Vlieggeert, J.

presented,<sup>2</sup> the last quarter of the twentieth century can no longer be fitted into this comfortable scene either. Major changes that were to affect the general attitude towards the work of children occurred during this period. This account postulates an additional period characterised by rapid change and renewed exploitation, which until recently went largely undetected.

As the pre-industrial period has not been included, whilst the movement to eradicate child work coincided with the industrial period in the 'States' under consideration, this chapter consists of three parts. It covers the following phases: i) Industrialisation and the beginnings of child labour legislation, ii) period of consolidation and iii) period of disillusion.<sup>3</sup> The first section describes the period between 1850 and 1930, the second section covers the period from 1930 to 1975 and the third describes the period from 1975 up to the present.

Two of the three 'States' in particular experienced an extraordinarily fast population growth through immigration from ethnically very diverse groups, who generally were willing to do any kind of work, however poorly paid.<sup>4</sup> This led in many cases to further inequality and racial discrimination. The ethnic mix and fast growth has been illustrated by population charts interspersed with the text. All three societies have experienced a large influx of undocumented immigrants, which is not reflected in the charts due to the lack of official figures.

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C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*. Assen, van Gorcum.

<sup>2</sup> Vliegheert, *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, pp. 1-14.

<sup>3</sup> The term 'disillusion' has been used, because of the false optimism concerning the enactment of child labour legislation, thought to signify the end of the economic exploitation of children and young people.

<sup>4</sup> Alofs, L. and L. Dalhuisen (1997). *Geschiedenis van de Antillen: Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten*. Zutphen, Walburg Pers, p. 32; Schrag, P. (1999). *Paradise lost*. Berkeley, University of California Press, p. 57.

## **6.2. The beginnings of child labour legislation (1850-1930)**

### **6.2.1. Overview**

Both in California and the Netherlands child labour legislation preceded regulations for adult workers. In California laws regulating child labour were extracted from employers' organisations by the unions,<sup>5</sup> while the first 'child law' in the Netherlands was due to an initiative of a member of the government<sup>6</sup> some twenty-five years before the regulation of general working conditions.<sup>7</sup> As to Aruba, there is no record of any enactment of child labour legislation before 1932, when the labour of children under thirteen was first prohibited.<sup>8</sup>

#### **6.2.1.1. California**

Until the middle of the nineteenth century the population of California, which as yet 'was a land almost without children',<sup>9</sup> counted at most some 250,000 Native Americans. In 1848 it became part of the American Union as the sixteenth non-slave State.<sup>10</sup> The prevailing sentiment was not that slavery as such was unethical, but that the State should be kept white.<sup>11</sup> The discovery of gold deposits in 1848 generated an uncontrolled influx of miners, leading to an increase of the white population from 26,000 to 380,000 in less than fifteen years, whilst the native population fell to 50,000. During the 1850s California adopted an *Act for the Government and Protection of Indians*<sup>12</sup> providing in s 3. for the indenture of Indian children with consent of their

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<sup>5</sup> Eaves, L. (1910). *A History of California Labor Legislation*. Berkeley, The University Press. p. 287.

<sup>6</sup> van Houten's speech to the Second Chamber in 1871, see Chapter 5, footnote 7.

<sup>7</sup> The 1895 *Veilighheidswet* (Safety Act), Stb. 1895/137.

<sup>8</sup> *Landsverordening* PB 1932, no 138, superseded by the *Arbeidsregeling* 1952, PB 1952, no 39.

<sup>9</sup> Caption to a pre-1850s exhibit of California life, Oakland Museum.

<sup>10</sup> Enshrined as Section 18 in the 1849 *Constitution of the State of California*: 'Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State'.

<sup>11</sup> The option of prohibiting entrance of free negroes into the future State gave rise to heated discussions, Rolle, A. (1987). 4th ed. *California: a History*. Arlington Heights, Hadrian Davidson.

<sup>12</sup> Chapter 133, *Statutes of California and Amendments to the Codes* (hereafter: *Stats.*), April 22, 1850, in defiance of the U.S. Supreme Court Decision of *Worcester v. Georgia*, 31 U.S. 515 (1832), which established the authority of the Federal Government in Indian affairs.

parents to 'any person having or hereafter obtaining a minor Indian' which would authorise 'him or her to have the care, custody, control and earnings of such minor, until he or she obtain the age of majority'. In addition, Indians were denied the right to testify in court against whites,<sup>13</sup> while they could be declared vagrants upon the word of any white citizen, whereafter they might be auctioned as labourers for a period of up to four months.<sup>14</sup> The *Act* was amended in 1860 to include any Indians - children as well as adults - held as prisoners of war. Indenture of minors was permitted up to the age of twenty-five for females, and thirty for males.<sup>15</sup> Although California was a non-slave State, some 3000 cases of enslavement of Native American children<sup>16</sup> during the 1850s and 1860s have been recorded.<sup>17</sup> While most of these children were used for farm or domestic labour, there are reports of boys forced to serve in the militias or acting as beasts of burden when snows of the High Sierra winters made trails inaccessible to animals.<sup>18</sup> Although concerned citizens on occasion reported cases to the Indian agent, no one accused of kidnapping was ever convicted.<sup>19</sup> The forced labour of non-whites, including children, would subsequently be condemned as unfair competition at National Labor Union discussions concerning the regulation of working conditions.<sup>20</sup>

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<sup>13</sup> S. 6.

<sup>14</sup> S. 20.

<sup>15</sup> Ch. 231 *Stats.*, s 3.

<sup>16</sup> Out of a total Indian population of an estimated 50,000, Rolle, A. (1987). *California: a History*, p. 300.

<sup>17</sup> Cook, S. F. (1976). 'The American Invasion, 1848-1870'. *The conflict between the California Indian and White Civilization*. S. F. Cook, ed. Berkeley, Los Angeles, CA, University of California Press. According to the *Sacramento Union* of July 19, 1862, white raiders systematically killed Indians in order to sell their children, Cook, S. F. (1976). 'The American Invasion, 1848-1870', p. 57.

<sup>18</sup> *Sacramento Union*, July 31, 1860: p. 4, in Baur, J. E. (1978). *Growing up with California: a history of California's children*. Los Angeles, Kramer, pp. 36, 43.

<sup>19</sup> Reports in *San Francisco Bulletin*, October 21, 1861; *Sacramento Union*, October 18, 19; 1861, in Cook, S. F. (1976). 'The American Invasion, 1848-1870', p. 59.

<sup>20</sup> "The conditions of labor should be positively fixed by the laws of the Nation. Free labor must not be made to compete with labor in restraint, nor should labor under our system of civilization be allowed to come into competition with a lower order of men and system of civilization." California Branch, 1870, Eaves, *A History of California Labor Legislation*, p. 23.

According to a near-contemporaneous account of the beginnings of Californian labour legislation, there were 'but few states in the Union where the labor of children has been so little utilized as in California'.<sup>21</sup> This was due to the fact that the first settlers were single men. In addition, there was no demand for the cut-price labour of children, as Chinese immigrants, who arrived in large numbers during the second half of the nineteenth century, were willing to accept any work, however poorly paid.<sup>22</sup> Like Indians and Blacks, who were able to enter the State as free citizens, Asians were frequently subjected to racist attacks and excluded from all social and political activity.<sup>23</sup> Laws prohibiting the testimony of those categorised as Negroes, Mulattos or Indians in cases involving whites, were extended to the Chinese in 1854 leaving them equally defenceless.<sup>24</sup> This situation lasted until the passage of the *Federal Civil Rights Act* 1866,<sup>25</sup> which provided that all persons in the U.S. were equally entitled to give evidence.<sup>26</sup> As regards children, Negroes, Mongolians and Indians were excluded by law from the public schools in 1860 although separate schools supported by public funds could be established.<sup>27</sup> A later amendment authorised the admission of minority children provided there were no objections from the parents of their classmates.<sup>28</sup>

Once the California labour movement got off the ground, its efforts were directed to the protection and education of the children of wage-workers, while attempting to keep non-whites out of the workforce. As the Branch of the National Labor Union proclaimed in 1870 'labor [should] under our system of civilization [not] be allowed to

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<sup>21</sup> Eaves, L. (1910). *A History of California Labor Legislation*, p. 287.

<sup>22</sup> History is largely silent on the participation of non-white children in the workforce. There are no records of the employment of young Chinese or Blacks, although they most likely would have done their share of work at home or in family workshops.

<sup>23</sup> California Supreme Court, *People v. Hall* (1854) 4 Cal. 399.

<sup>24</sup> Eaves, L. (1910). *A History of California Labor Legislation*, p. 114. *Act concerning Civil Cases*, 1851 (amended 1854), Ch. 5 s 394; *Act regulating Criminal Proceedings*, 1850, Ch. 119, s. 14.

<sup>25</sup> 42 U.S.C. §1981.

<sup>26</sup> However, Native Americans were still excluded, Ch. 31, s.1: 'all persons born in the United States [.] excluding Indians not taxed [.] shall have the same rights [.] to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws.'

<sup>27</sup> *Stats.*, 1860, Ch. 329.

come into competition with a lower order of men and system of civilization'.<sup>29</sup> Apprentice laws adopted in 1858, applicable to white minors only, were virtually ignored.<sup>30</sup> More substantive legislation was adopted in 1868. Eight hours was to be a legal day's work unless the parties decided differently. Restrictions on the working day applied to underage workers first of all.<sup>31</sup> Compulsory education, considered essential for compliance with the law, was introduced in California within the next decade.<sup>32</sup> Further regulation of the employment of children and females followed in 1889.<sup>33</sup> The proposed age of entry into labour of thirteen was arbitrarily lowered to ten. Working minors were to be registered, while enforcement of the law was entrusted to a Labor Commissioner charged with keeping records.<sup>34</sup> There is little indication that the law was ever enforced.<sup>35</sup> In 1905 the Commissioner's tasks were extended to the collection of marriage, divorce and crime statistics in addition to activities one might expect to come under his direction, such as the hours and wages of labour. On top of all this, the Commissioner was also responsible for the inspection of scaffolding and, in 1891, the registration of some 72,000 Chinese immigrants. Resources were totally inadequate, while the office tended to be regarded as a political appointment with outgoing commissioners habitually removing the records of their years in office.<sup>36</sup>

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<sup>28</sup> *Stats.*, 1863-4, Ch. 209, s. 13.

<sup>29</sup> Eaves, *A History of California Labor Legislation*, p. 23.

<sup>30</sup> *Stats.*, 1858, Ch. 182. The 1870 census records 2,214 children between 10 and 15 engaged in gainful occupations in California, of whom 393 were apprenticed, Eaves, L. (1910). *A History of California Labor Legislation*, pp. 291, 295).

<sup>31</sup> *Stats.*, 1868, Ch. 329.

<sup>32</sup> *Stats.*, 1873-1874, Ch. 516, s. 1, "Children between 8 and 14 must attend school for at least two thirds of the school term with twelve weeks of consecutive attendance," Eaves, L. (1910). *A History of California Labor Legislation*, p. 308.

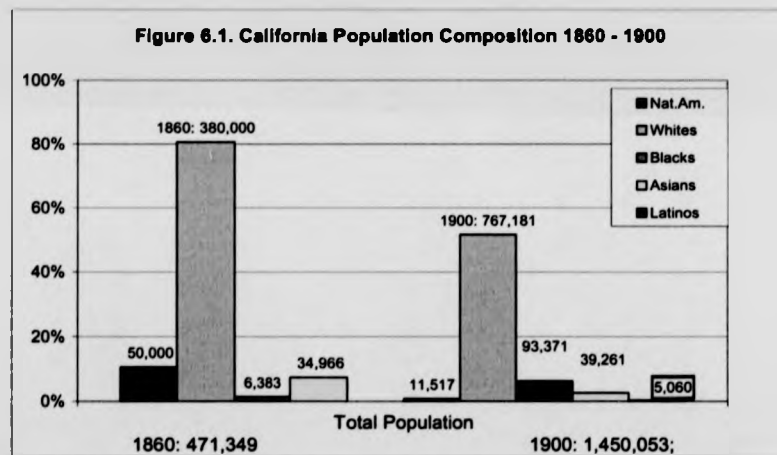
<sup>33</sup> *Stats.*, 1889, Ch. 7.

<sup>34</sup> *Stats.*, 1889, Ch. 7.

<sup>35</sup> Eaves, L. (1910). *A History of California Labor Legislation*, pp. 297-298. In 1892 the Retail Clerk's Association denounced the employment of boys under 12 years in the drygood stores of San Francisco, as children working from 8 to 6 on weekdays and until 10 on Saturdays often had to be dragged asleep from under the counters, *Pacific Union Printer*, July 1892, p. 2, in Eaves, L. (1910). *A History of California Labor Legislation*, p. 298.

<sup>36</sup> Eaves, L. (1910). *A History of California Labor Legislation*, p. 375.

More serious attempts were made to enforce legislation passed in 1901<sup>37</sup> providing that: 'No child under 12 years of age shall be employed in any factory, workshop, or mercantile institution, office, laundry, manufacturing establishment'.<sup>38</sup> A 1903 proposal to raise the minimum age to fourteen was defeated by the fruit canners in need of cheap seasonal labour. Legislation was passed in 1905, listing places of work where children under fourteen could not be employed, while night work was prohibited for young people below the age of sixteen.<sup>39</sup>



Courts were, however, reluctant to enforce the law until 1906, when an appeal by an employer charged with hiring minors under fourteen was dismissed by the Californian Supreme Court.<sup>40</sup> Citing 'an Act to enforce the education rights of children' of 1903,<sup>41</sup> a 1910 amendment to s. 2 of the 1905 Act provided, that minors under the

<sup>37</sup> *Tenth Biennial Report* pp. 42-43.

<sup>38</sup> *Stats.* 1901, Ch. 205.

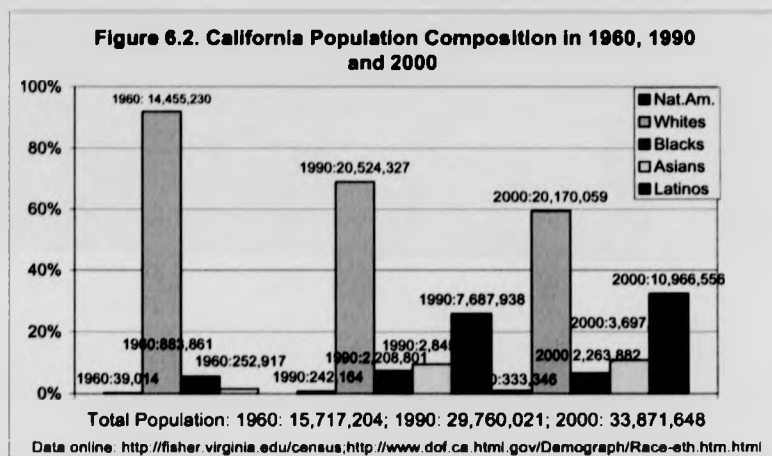
<sup>39</sup> *Stats.*, 1905, Ch. 118, ss 2 and 3

<sup>40</sup> Eaves, L. (1910). *A History of California Labor Legislation*, p. 305. "If any rational doubt exists as to the soundness of the legislative judgment upon the existence of the facts, that doubt must be resolved in favor of the legislative action and the law must accordingly be held to be valid in these respects." Shaw, J. *In re Spencer*, 149 Cal. 396; 86 P. 896; (1906).

<sup>41</sup> *Stats.* 1903, Ch. 270, §1, replacing "[a]n Act to enforce the educational rights of children," *Stats.* 1873-74, Ch. 516, §1.



age of sixteen, unable to read and write simple English, should not be employed. Competence in English was to be confirmed by their teacher, who would be in charge of the issue of work permits. In addition, the Act included a prohibition on night work by young people below the age of eighteen between 10 p.m. and 5 a.m.



In the meanwhile the introduction of the first bill to regulate child labour on a Federal basis in 1906 found itself opposed with the argument that such legislation was a matter for the States rather than the Union.<sup>42</sup> Efforts to ban child labour concentrated on conditions in the cotton mills of the South or the seafood canneries of the Eastern Seaboard, where conditions were generally worse than those in California.<sup>43</sup> The photographs of Lewis Hine form a vivid record of the shameful child labour practices in these industries.<sup>44</sup> During the same period industrial homework and farm labour, including so-called 'stoop labor' in the cotton fields and fruit farms, absorbed many

<sup>42</sup> Among others by members of the National Child Labor Committee, such as de Forest and Murphy, Trattner, *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*, pp. 88, 90, see also *Literary Digest* 34 (Feb. 9, 1907), <http://www.boondocksnet.com/labor/>.

<sup>43</sup> At least for white children.

<sup>44</sup> Trattner, W. I. (1970). *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*, pp. 105-108.

children in California.<sup>45</sup> Two Federal child labour Acts, passed in 1916 and 1922 respectively, were challenged as unconstitutional in *Hammer v Dagenhart* 247 U.S. 251 (1918)<sup>46</sup> and *Bailey v Drexel Furniture Company*, 259 U.S. 42 (1922)<sup>47</sup> and struck down by the Supreme Court as infringing state rights. It would take until 1938, when a raft of social legislation was adopted<sup>48</sup>, before a federal child labour law was adopted as a chapter of the *Fair Labor Standards Act (FLSA)*.

#### **6.2.1.2. The Netherlands**

The fact that many children worked for their livelihood, was considered normal in the Netherlands until well in the nineteenth century. At a time when social reformers in the United Kingdom such as Robert Owen spoke out against the ills of child labour, any suggestion of government intervention in the labour market flew in the face of commonly held beliefs. Yet there were voices recommending a minimum of school attendance before children started regular work. It was argued that schooling was needed to instil a sense of duty and order among the lower echelons of society, whilst it would allow young people to read and understand the decrees of the affluent classes.<sup>49</sup> The Catholic clergy in the South of the country argued that children should be kept away from the corrupting atmosphere of the factories until after their first communion.<sup>50</sup> In addition, several town corporations voiced their concern over the harmful effect of factory work on children's health, for instance, by the inhalation of fibres.<sup>51</sup>

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<sup>45</sup> Trattner, W. I. (1970). *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*, p. 150.

<sup>46</sup> 1916 *Keating-Owen Act*, Ch. 432, 39 Stat. 675, prohibiting Interstate or foreign commerce of goods manufactured at a mill where children under fourteen had been employed within a month's time of the shipment.

<sup>47</sup> 1919 *Child Labor Tax Law*, Title 12 of *Revenue Act* 24, Ch. 18, 40 Stat. 1138, a law to prohibit transportation in interstate commerce of goods made at a factory where children were employed.

<sup>48</sup> E.g. the *Social Security Act*, 1935 Ch. 531, resulting in Aid to Dependent Children and Social Security assistance.

<sup>49</sup> Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 31.

<sup>50</sup> Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 34.

<sup>51</sup> Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 38.

The 1850s was a time of great poverty in the Netherlands. Failure of the potato harvest in consecutive years led to higher prices, while changes in the Poor Law resulted in the reduction of welfare provisions. When technological change in certain industries led to less demand for child labour, a number of parents were sufficiently desperate to try and secure work for their offspring as domestics or farm labourers in South Africa.<sup>52</sup> According to a government survey of 1860/1861 children mostly worked in brick works, cigar-factories and weaving-mills.<sup>53</sup> Rather than depriving children of income, the Teachers' Union, the principal advocate for the regulation of child labour, was in favour of a 'half-time system' as in the U.K..<sup>54</sup> The Union's proposals came at a time, when policies were determined by the extreme liberalism of the Dutch government, which rejected all intervention in economic affairs on principle. A government commission decided after years of research that regulation of child labour was unnecessary, as a few years of schooling was certain to solve any problems. Introduction of compulsory education itself was, however, seen as interference in family life.<sup>55</sup>

In 1871 a member of Parliament, van Houten, introduced the issue in the Second Chamber, arguing that regulation of child labour would be preferable over the introduction of compulsory education, as the former would impose obligations upon employers rather than heads of family.<sup>56</sup> When this proposal did not receive any support in Parliament, the Teachers' Union once more took the initiative by sending questionnaires to its members. The survey found that many children under twelve were

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<sup>52</sup> Sicking, I. (1995). *In het belang van het kind: Nederlandse kinderemigratie naar Zuid-Afrika in de jaren 1856-1860*. Utrecht, Vakgroep Geschiedenis der Universiteit.

<sup>53</sup> Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 64.

<sup>54</sup> Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 73.

<sup>55</sup> Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 89.

<sup>56</sup> Proceedings of the 'Second Chamber,' Tweede Kamer der Staten-Generaal (1871-1872). *Handelingen Tweede Kamer*. s'Gravenhage, Tweede Kamer der Staten-Generaal, 1871-1872, pp. 333-337, see Vlieggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 109.

employed in beet-sugar and cardboard factories, with working hours from six a.m. to seven p.m., on occasion extending through the night. Younger children tended to be employed in porcelain works and match factories, while many five and six year olds employed in the brick works during the summer months, were set to work in the rope walks in winter. In some parts of the country public auctions of the services of orphans still took place after church.<sup>57</sup> The Teachers' Union found that most of these children were unable to go to school, and even if some of them managed to attend, this was inadequate to provide them with the elementary knowledge required for their moral and intellectual development. The Union also claimed that employers preferred children to adult workers because of their low wage rates and that useful technological advances were being held back because of the use of child labour. It therefore recommended the introduction of compulsory education.<sup>58</sup> A new bill put before the Second Chamber by van Houten in 1873 proposed provisions for the prohibition of work by children under twelve as well as the introduction of compulsory education for eight to twelve year olds.<sup>59</sup> The first Dutch child labour law was enacted in 1874 with amendments that excluded domestic, personal services and agricultural work, whilst the provision linking the prohibition of child labour with compulsory education was abandoned.<sup>60</sup>

After the decision of an 1875 appeal case, that assistance by a child to his father in a business undertaking was to be regarded as 'personal services',<sup>61</sup> many children left school to work once more in the rope-walks. Another decision upheld the 1874

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<sup>57</sup> Vleggeert, J. C. (1984). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 118.

<sup>58</sup> 1872 Report concerning the education of children working in or for factories, pp. 22-23, Vleggeert, J. C. (1984). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, pp. 118-119.

<sup>59</sup> An explanatory note by van Houten stressed the 'right of the child to be cared for by his parents, or, if such care was lacking by the State', §4, Vleggeert, J. C. (1984). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 138., see Chapter 5, footnote 7.

<sup>60</sup> *Kinderwet* (Child Act), Stb. 1874/130, Vleggeert, J. C. (1984). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 167.

<sup>61</sup> W.3855, Postma, A. (1977). *De mislukte pogingen tussen 1875 en 1889 tot verbetering en uitbreiding van de kindwet van Houten*. Deventer, Kluwer, p. 87.

Act.<sup>62</sup> As no child labour cases came before the Supreme Court (*Hoge Raad*), there was no binding authority.

During 1886-1887 the Goeman Borgesius Commission, an official commission consisting of teachers, doctors and trade union officials held an enquiry in order to evaluate the efficacy of the 1874 Act. According to the findings large numbers of many children under twelve were still working, while many twelve-year olds worked for over seventy hours a week.<sup>63</sup> Among other things the 1887 report gives some idea of the attitudes of employers towards their young employees.<sup>64</sup>

Two years later the Act was amended. 'Labour' was now understood as all activities for any enterprise, except agricultural undertakings or at the residence of the employer concerned. Kitchens and places for the preparation of food were also excluded. Persons under sixteen and women could not be employed in factories or workshops on Sundays or between seven p.m. and five a.m. Up to three labour inspectors were to be charged with the enforcement of the 1889 *Arbeidswet* (Labour Act),<sup>65</sup> which already covered three important elements of a child's protection, namely safety, health and development of the child's personality.<sup>66</sup> The 1895 *Safety Act*,<sup>67</sup> applicable to all workers, constituted a further break with the ideology that state intervention in the area labour relations was admissible only to ensure the protection of

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<sup>62</sup> W.4810, Postma *De mislukte pogingen tussen 1875 en 1889 tot verbetering en uitbreiding van de kindwet van Houten*, p. 88.

<sup>63</sup> Vleggeert, J. C. (1978). 2nd ed. *Kinderarbeid in de negentiende eeuw*, Haarlem, Fibula-Van Dishoeck, p. 79.

<sup>64</sup> For instance, an interview with the owner of a glass works concerning the night work of twelve or thirteen-year-olds charged with carrying wares to the kilns. The employer commented that boys would run for twelve hours at a stretch without any effort, as it was no more than a game for them, Giele, J. (1981). *Een kwaad leven: heruitgave van de 'Enquête betreffende werking en uitbreiding der Wet van 19 September 1874 (Staatsblad No. 130) en naar den toestand van fabrieken en werkplaatsen.'* *De arbeidsenquête van 1887 (Sneek, 1887)*. Nijmegen, Link, p. 208.

<sup>65</sup> Stb. 1889/48, (*Labour Act*), amended by Stb. 1911/314, Stb. 1919/624, Stb. 1954/388.

<sup>66</sup> Art. 12.

<sup>67</sup> Stb. 1895/137.

*personae miserabiles*,<sup>68</sup> such as women and children. Five years later compulsory education was also implemented<sup>69</sup>.

In 1919 a *Labour Act* regulating the protection of all categories of workers was enacted. It made use of the definition of the term 'occupation' as 'any activity requiring physical or mental exertion in observance of a contractual obligation' in accordance with a Supreme Court decision of 1910.<sup>70</sup> The eight-hour workday became the accepted norm, although exceptions were possible. The age of entry into labour was raised to fourteen, while the Act contained regulations for specific types of work. For the first time a concept of liability was defined in Dutch law, consisting of two discrete elements. The first is objective criminal liability on the part of any person permitting another to perform labour in breach of the legislation, and the second a duty of care on the part of persons with supervisory functions as well as parents or guardians.<sup>71</sup> Since then the lower age limit was raised several times,<sup>72</sup> but otherwise the issue of child work did not receive much attention until the 1980s, as if the 1919 legislation constituted the definitive response to the regulation of child labour<sup>73</sup>.

#### 6.2.1.3. Aruba

The Antilles Islands became a Dutch colony after the Napoleonic wars. The largest island, Curaçao, served as a centre for the Dutch slave trade, whilst Aruba was

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<sup>68</sup> 'Wretched persons' term derived from Canon law used for the helpless and incompetent, Berman, H. J. (1983). *Law and revolution: the formation of the western legal tradition*. - Cambridge, Mass.; London: Harvard University Press, 1983, p. 222; The secularisation of the duty of the Church to care for the helpless is explained in Tuchman, B. W. (1979). *A distant mirror: the calamitous 14th century*. Harmondsworth, Penguin books, p. 35.

<sup>69</sup> Stb. 1900/111.

<sup>70</sup> H.R.W.9076. The case concerned an infant carried across a stage, Ministerie van Welzijn, Raad voor het Jeugdbeleid, (1990b). *Komt tijd, komt raad: een commentaar op de nota 'Nadere uitwerking van de Jongerenparagraaf uit de Hoofddlijnnnota' Arbeidstijdenwet; Nr 266-85/1546K*. Rijswijk, Raad voor het Jeugdbeleid, p. 16.

<sup>71</sup> Art. 89.

<sup>72</sup> Amended several times, see footnote 85.

<sup>73</sup> Treatment of the subject in the literature tended to be historical until the early 1980s, with the publication of journal articles entitled, 'Child labour makes a comeback' Hartmeyer, H. and R. van Loenen (1984). 'Kinderarbeid steekt de kop weer op.' *De Nederlandse Gemeenten* (3), 20/01/1984, or 'Labour Law an expendable luxury?' Heerma van Voss, G. and L. Karsten (1984). 'Arbeidswet een overbodige luxe?' *Intermediair* vol. 20(46), pp. 49-55, 59, cited in Neve, J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een*

used as a depot for trade in horses. As Aruba was too arid to establish plantations, the island escaped the horrors of the slavery in the rest of the Caribbean. Numbers of slaves living permanently on the island were small. Children tended to be charged with weeding kitchen gardens, domestic tasks or looking after the horses.<sup>74</sup> Although slaves were *de facto* recognised as human beings in 1828, slavery was not officially abolished until 1863 in keeping with the recommendation for gradual emancipation by the catholic clergy.<sup>75</sup>

Despite the fact, that Aruba was able to enact local ordinances from 1954 onward, when the Antilles Islands became a coequal 'State' within the Kingdom of the Netherlands, general decrees were enacted on the main island of Curaçao.<sup>76</sup> The first attempt to regulation of child work was a 1939 ordinance prohibiting the employment of children under thirteen. As there is no information concerning any enforcement mechanisms, one can only speculate on the efficacy of such an approach to legal regulation<sup>77</sup>. Until the late 1980s the only industries on Aruba consisted of an oil refinery and the manufacture of *aloe vera* beauty products, both too specialised to make use of child labour. Since 1986, when Aruba seceded from the Antilles Islands, acquiring a special status within the Kingdom of the Netherlands, the 'State' has followed a vigorous policy of development of its tourist industry, which makes extensive use of cheap and often undocumented immigrant labour. However, there are no records of any illegal employment of young people under fourteen.

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*verkennd onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland.* s'Gravenhage, Ministerie van Sociale Zaken.

<sup>74</sup> Alofs, L. and L. Delhuisen (1997). *Geschiedenis van de Antillen: Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten*, pp. 53-54.

<sup>75</sup> Alofs, L. and L. Delhuisen (1997). *Geschiedenis van de Antillen: Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten*, p. 57.

<sup>76</sup> However, a *Work Regulation Ordinance* was adopted in 1952, when Aruba was still a Dutch colony. See Appendix 6 for the island's status as a member of the Kingdom of the Netherlands. Alkema, E. A. (1999). 'Constitutional Law'. *Introduction to Dutch Law*. J. M. J. Chorus, et al., eds. The Hague, Kluwer Law International. pp. 295-296.

<sup>77</sup> The present-day labour inspectorate consists of a total of three officials, see, footnote 212.

## **6.2.2. The beginnings of the regulation of child prostitution**

### **6.2.2.1. California**

Compared to the regulation of work by children and adolescents, regarded as too demanding because of their age, the involvement of children in prostitution has received little attention in either California or the Netherlands during the nineteenth century. In contrast with the control of prostitution through regulation, aiming at the prevention of venereal disease, as adopted, for instance, in England,<sup>78</sup> the Penal Code of California targeted soliciting as a form of vagrancy.<sup>79</sup> However, both keeping a brothel and living in a brothel was prohibited.<sup>80</sup> Female children were protected to some extent by a statute construing sexual intercourse with minor girls as rape.<sup>81</sup> Also, the coercion of females for purposes of prostitution was prohibited. The following sections of the *Penal Code* refer specifically to young people under eighteen involved in practices associated with prostitution.<sup>82</sup> Apart from amendments to render the laws gender-neutral, these sections of the *Penal Code* are still in force. Sex laws were tightened in the early 1900s by raising the threshold age in many States. As regards

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<sup>78</sup> *Contagious Diseases Acts*, 1866 to 1869). 29 & 30 Vict. c 35; 31 & 32 Vict. c 8032 & 33 Vict. c 96.

<sup>79</sup> § 647, 'enacted 1854, and readopted 1872, repealed and replaced by Ch. 560, §2 in 1961, Jennings, M. A. (1976). 'The Victim as Criminal: A Consideration of California's Prostitution Law.' *California Law Review*, p. 1245.

<sup>80</sup> *Penal Code of California*, enacted 1872, Title IX, Ch. 1, § 315 'Every person who keeps a house of ill-fame in this State, resorted to for the purposes of prostitution, or lewdness, or who willfully resides in such a house, is guilty of a misdemeanor.'

<sup>81</sup> *Penal Code*, § 261; as in the Federal Penal Law, enacted, Ch. III, 'Of Rape', Art. 467, 'Carnal knowledge of a female under the age of eleven years, is in itself a rape, without any evidence of force, menace, imprisonment or fraud.' The age of consent was raised to sixteen in 1897, Ch. 139, and to eighteen in 1913, Ch. 122, § 1, which is still in force.

<sup>82</sup> *Penal Code* §§ 266, 'Inveiglement or enticement of unmarried female under eighteen of previous chaste character for prostitution, procuring female for illicit intercourse under false pretences, enacted 1872; 266h, 'selling female for illicit use'. [now relevant: (b) 'If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years. If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.'

*Penal Code*, § 267, 'abduction of female under eighteen for purposes of prostitution (now: 'any other person under the age of 18 years') §§ 309, 'Admitting or keeping minors in house of prostitution, enacted 1872, 273a, 'Minors not to deliver messages to places of questionable repute', 273f, 'Sending minors to immoral places', enacted in 1873. The last four Acts have been amended to be gender-neutral on the first of January 1976, Jennings, M. A. (1976). 'The Victim as Criminal: A Consideration of California's Prostitution Law.' p 1241.



Federal legislation, the *Mann Act*, adopted in 1910,<sup>83</sup> prohibited the interstate and foreign transportation of girls and women for immoral purposes. Shorn of the racist undertones of the official designation '*White Slave Traffic Act*' of 1910, the Act is still in force today, used to combat trafficking offences.<sup>84</sup>

#### 6.2.2.2. The Netherlands

From 1811, when the Netherlands adopted the French Code Penal, which did not penalise commercial sexual relations between adults, to the adoption of the *Wet tot bestrijding der zedeloosheid* in 1911,<sup>85</sup> prostitution was subject to few restrictions. As in several European countries, a number of towns operated a system of inspection, obliging prostitutes to present themselves regularly for health inspections.<sup>86</sup> The 1886 *Wetboek van Strafrecht* (hereafter: Criminal Code) added few rules relating to prostitution. Keeping a brothel remained legal, provided no minors were admitted, as sexual intercourse with women under sixteen was an indictable offence.<sup>87</sup> In 1911 the Criminal Code was amended in accordance with the moral principles of the denominational Government of the time. Keeping a brothel<sup>88</sup> as well as sexual intercourse with minors of the same sex<sup>89</sup> became offences.

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<sup>83</sup> Designated the '*White Slave Traffic Act*,' Ch. 395, §8, §§ 1, 2, 5, and 36 of Stat. 825-827 are applicable to the trafficking of women and girls.

<sup>84</sup> As Penal Code 18 U.S.C. § 2421-2424, amended in 1978 by Public Law No. 95-225, and by the *Violent Crime Control and Law Enforcement Act*, § 2423. Transportation of minors, (a) Transportation with intent to engage in criminal sexual activity, 'of individual who has not attained the age of 18 years in interstate or foreign commerce', (b) Travel with intent to engage in illicit sexual conduct.

<sup>85</sup> Stb. 1911/130, amending the *Wetboek van Strafrecht* (Criminal Code).

<sup>86</sup> de Vries, P. (2000). *White Slaves and Tax Payers: Prostitution, the state and feminist discourse in historical perspective*. European Consortium of Political Research, Copenhagen, April 14-19, <http://www.essex.ac.uk/ECPR/events/jointsessions/paperarchive/copenhagen/ws12/vries.PDF>, pp. 3-4.

<sup>87</sup> *Wetboek van Strafrecht*, Stb. 1886/6, Boek II, Title XIV, 'Misdriften tegen de zeden', Art. 244, 'sexual intercourse with women under twelve' and 245, 'sexual intercourse with women between twelve and sixteen'. These articles are still part of the Dutch Criminal Code.

<sup>88</sup> Art. 250bis.

<sup>89</sup> Up to age twenty-one, Art. 248bis, repealed by Stb. 1971/212.

#### **6.2.2.3. Aruba**

Until 1991, when Aruba enacted a Criminal Code of its own, Chapter VII, Control of Public Morals', of the Curaçao Criminal Code, adopted in 1886, and amended twice, in 1933, and 1966, did not contain a single reference to sexual offences. It took until the 1950's before the subject of prostitution was even mentioned, and then only obliquely.

#### **6.2.3. Assessing the beginnings of the regulation of child labour**

Before the twentieth century there have been few attempts to define the concept 'child' by means of age delimiters, as the term simply referred to a young person who was not yet fully grown.<sup>90</sup> Also, criteria other than 'age' could be considered of more importance, such as a capacity for the understanding of moral issues, as suggested by a proposal by the Dutch Catholic clergy to keep children out of factories until after their first communion.<sup>91</sup>

Laws regulating child labour were unpopular with large sections of the population including some of those concerned most closely.<sup>92</sup> Many poor families resented the fact that they had to make do with fewer earners, while it was also seen as an infringement on the rights of the heads of family. In addition, the priority for many poor families was

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<sup>90</sup> 'Age was not considered as an important criterion of legitimacy until after the 1860s' Zelizer, V. A. (1985). *Pricing the Priceless Child*, p. 75.

<sup>91</sup> Vleggeert, J. C. (1964). *Kinderarbeid in Nederland 1500-1874: van berusting tot beperking*, p. 34.

<sup>92</sup> The Dutch 1874 Child Law was poorly observed, while many children left school to return to work after case W.4810. Postma, A. (1977). *De mislukte pogingen tussen 1875 en 1889 tot verbetering en uitbreiding van de Kinderwet-van Houten*. Deventer, pp. 40, 88. A motion to abolish the 1874 Child Law was adopted by the General Christian Labourers' Organisation Patrimonium in 1885 on the ground that the state should not interfere with tasks laid upon parents by God. Vleggeert, J. C. (1978). *Kinderarbeid in de negentiende eeuw*, p. 96. In California there also was a great deal of resistance to the child labour provisions as evident from the 1906 child labour cases Eaves, L. (1910). *A History of California Labor Legislation*, p. 305. Resistance by U.K. child workers against regulation is mentioned in Cunningham, H. (2001). 'The Rights of the Child and the Wrongs of Child Labour'. *Child Labour*. K. Lietaen and B. White, eds. Amsterdam, Aksant Academic Publishers, p. 16.

to provide children with the means to maintain themselves, for instance by sending them abroad where they were guaranteed employment.<sup>93</sup>

The proposition, that work in the mills instead of in domestic work might constitute a liberating rather than a crippling experience for young people as implied in the introduction to Robinson's account of factory work,<sup>94</sup> is unconvincing in view of the argument that working hours tended to be dictated by the needs of production and were less flexible than household tasks. Issues presented as insights of today, were already mentioned over a century ago. For instance: schooling as an instrument of control<sup>95</sup> as well as development,<sup>96</sup> liability of both parents and employers,<sup>97</sup> the potential of cheap labour to discourage investment in technology,<sup>98</sup> as well as the argument, that unpopular regulations will be disregarded, unless governments are prepared to allocate funding for effective enforcement mechanisms.<sup>99</sup>

As regards one of the most exploitative forms of child work, the prostitution of juveniles was controlled by the prohibition of 'carnal knowledge' with a child or woman under a certain age. Prostitution itself was not prohibited in the Netherlands, whilst the Californian approach to prostitution has since the early days of penal legislation been based on targeting vagrancy, or 'loitering', which is still an offence today. Unlike California and the Netherlands the early Aruban Criminal Code did not contain any prohibition against sexual contact with minors. In fact, the law was completely silent on the matter, as though it was unconceivable that young people could be involved in

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<sup>93</sup> Sicking, I. (1995). *In het belang van het kind : Nederlandse kinderemigratie naar Zuid-Afrika in de jaren 1856-1860*, pp. 1, 30.

<sup>94</sup> Pultz, J. W., Introduction to Robinson, H. H. (1976). reprint from 1895 edition ed. *Loom and spindle, or, Life among the early mill girls*. Kailua, Hawaii, Press Pacifica, pp. x, xli.

<sup>95</sup> Foucault, M. (1977). translated from French, 1st edition 1975. *Discipline and Punish*. (Translator, A. Sheridan) London, Allen Lane; Holt, J. (1975). *Escape from Childhood*. 1974, 1st imprint, Harmondsworth, Penguin, p. 183, see also section 6.2.2.

<sup>96</sup> Fyfe, A. (1989). *Child labour*. Oxford, Polity Press, p. 31.

<sup>97</sup> Stb. 1919/624, see Chapter 7, footnotes 89 and 159.

<sup>98</sup> See section 6.2.1., Trattner, W. I. (1970). *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*, p. 159.

<sup>99</sup> See Eaves, L. (1910). *A History of California Labor Legislation*, p. 373. See also Lantos, T. (1992). 'The Silence of the Kids: Children at Risk in the Workplace.' *Labor Law Journal*, vol. 43(2), pp. 68-69.

sexual acts. Such an attitude is in conformity with a conception of the child as set apart from any unpleasantness, which has long dominated views of children and childhood.

### **6.3. Period of consolidation (1930-mid 1970s)**

By the 1930s the view that the state has a duty to intervene on behalf of children lacking the power to negotiate terms for their labour, was no longer contested. This period also saw a change in the perception of children from independent and economically useful into helpless and incompetent beings to be prepared for adulthood by play and schooling.<sup>100</sup> Once the need for compulsory education had been accepted, little attention was paid to out-of-school economic activities of children.<sup>101</sup> The view, that children ought to spend their lives preparing for adulthood in education or at play, protected from care and unpleasantness, has dominated much of the thinking of the twentieth century.

#### **6.3.1. California**

In addition to child labour legislation the Roosevelt Administration enacted a raft of other social legislation relevant to families with children during the late 1930s, while California adopted a *Social Security Act* in 1935. Although benefits such as these served to alleviate the worst of the effects of poverty, many teenagers worked as a matter of course to help their families during the 1960s and 1970s.<sup>102</sup> Amendments to the *FLSA* raised the age of entry into labour eventually to sixteen, equal to the age of the end of compulsory schooling. Yet certain areas of activity were not subject to any regulation at all, whether low paid drudgery in the fields<sup>103</sup> or lucrative work for the

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<sup>100</sup> Platt, A. M. (1969). *The Child Savers / The Invention of Delinquency*. Chicago; London, The University of Chicago Press, p. 135; Zelizer, V. A. (1985). *Pricing the Priceless Child*. New York, Basic Books, pp. 11, 209.

<sup>101</sup> Neve, J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*, p. 3.

<sup>102</sup> Confirmed e.g. by respondents CA-D, CA-I.

<sup>103</sup> Children continued to work in the fields of California, as nomadic farm labour children in the 1920s, Baur, J. E. (1978). *Growing up with California: a history of California's children*, p. 303; during the Depression years, Gregory, J. N. (1989). *American exodus: the dust bowl migration and Okie culture in California*. New York; Oxford, Oxford University Press,

entertainment sector. Serious exploitation of young people has been documented extensively for both. Once the potential of child actors as box office draws began to be appreciated in the Hollywood studios, young filmstars were exposed to the psychological burden of fame as well as the attention of grasping relatives.<sup>104</sup> The 1939 enactment of California's *Child Actors Bill*<sup>105</sup> (Coogan Bill), has proved to be inadequate to protect them from either.

A century after the enactment of laws discriminating against most ethnic minorities<sup>106</sup> saw the beginnings of equality in the 1954 Supreme Court decision of *Brown v. Board of Education* and the 1972 *Indian Education Act*.<sup>107</sup> The latter made an end to the education of Native American children as quasi-whites, which robbed them of their heritage.<sup>108</sup> While working by school-age children was seen as promoting educational objectives,<sup>109</sup> few of the individuals involved most closely, whether teenagers intent on earning, employers, parents or teachers, took the trouble to observe the regulations.

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p. 69, and in the 1960s and 1970s, Taylor, R. B. (1973). *Sweatshops in the sun: child labour on the farm*. Boston, Beacon Press, p. 98. Throughout, the enforcement of child labour legislation has remained a low priority.

<sup>104</sup> Staenberg, M. R. and D. K. Stuart (1997). 'Children as Chattels: the disturbing plight of child performers.', *Beverly Hills Bar Association*, pp. 23-30; Munro, E. D. (1996). 'Under Age, under Contract, and under protected: an Overview of the Administration and Regulation of Contracts with Minors in the Entertainment Industry in New York and California.' *Columbia-VLA Journal of Law and the Arts*, Spring 1996, pp. 553 - 570.

<sup>105</sup> Sections 36.1 and 36.2, Civil Code providing the Court with the power to set aside a portion of the earnings of the minor as a trust fund or savings plan, to remain under its jurisdiction. Staenberg, M. R. and Stuart, D. K. (1997). 'Children as Chattels: the disturbing plight of child performers.' pp. 26-28, see Chapter 7, Section 7.2.1.

<sup>106</sup> See footnotes 12 and 24 above. Native Americans and Chinese suffered worse discrimination in California than Blacks, who were allowed to testify by the 1863 state legislature, Baur, J. E. (1978). *Growing up with California: a history of California's children*, p. 378.

<sup>107</sup> Amended 1988, [http://www.ed.gov/databases/ERIC\\_Digests/ed314228.html](http://www.ed.gov/databases/ERIC_Digests/ed314228.html).

<sup>108</sup> Confirmed by respondent CA-1.

<sup>109</sup> E.g. in the Report of the Panel on Youth of the President's Science Advisory Committee, Report of the Panel on Youth of the President's Science Advisory Committee (1974). reprint of 1973 edition, *Youth Transition to Adulthood*. Chicago, University of Chicago Press, pp. 131-132, 147; Stephens, W. N. (1979). *Our Children Should Be Working*. Springfield, Illinois, Charles C. Thomas.

### **6.3.2. The Netherlands**

As in California, several amendments to the 1919 law raised the age of entry into labour to sixteen, linking it to the end of compulsory education.<sup>110</sup> In addition, a *Decree on Youth Employment* 1973 was incorporated into the *Labour Act* 1919.<sup>111</sup> It was concerned with the prohibition of work under certain conditions rather than specific activities, namely: i) monotonous work, ii) work under repugnant or nauseating conditions, iii) work in isolation, iv) piece work and v) work under climatologically inadequate conditions. Also, a *Decree for the Performance of Children* was enacted in 1984 in line with the standards laid down in the *Minimum Age Convention* 1973 and the *European Social Charter*.<sup>112</sup> As early stardom was considered detrimental to a child's development, exemption from the *Labour Law* 1919 would only be granted to children under the age of fourteen, provided they were cast in minor roles only.<sup>113</sup>

The depression of the 1930s, followed by the uncertain years of German occupation caused Dutch parents to put their trust in education. Work by children and teenagers was not taken seriously, but rather considered a whim to be indulged and in consequence poorly paid.<sup>114</sup>

### **6.3.3. Aruba**

In 1952 the Antilles adopted the *Arbeidsregeling* (Work Regulation Ordinance, hereafter WRO) containing a number of provisions relating to work by adolescents.<sup>115</sup> If any children worked outside their homes, this has not been recorded.

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<sup>110</sup> E.g. by raising the minimum age for entry into labour to fifteen in 1970.

<sup>111</sup> Art. 9\*, Stb. 1973/50.

<sup>112</sup> van Beckhoven, A. P. M. (1991b). *Evaluatie richtlijnen voor het optreden van kinderen*. Den Haag, Ministerie van Sociale Zaken en Werkgelegenheid, Directoraat-Generaal van de Arbeid door Regioplan Onderzoek en Adviesbureau voor Regionale Economie en Locale Ontwikkelingen BV., p. ii.

<sup>113</sup> van Beckhoven, A. P. M. (1991b). *Evaluatie richtlijnen voor het optreden van kinderen*, p. 22.

<sup>114</sup> A back-breaking day spent picking soft fruit for a jam factory paid fl. 1.00 in 1950 (personal experience).

<sup>115</sup> Unlike the third member of the Kingdom, the Antilles Islands, which enacted a *Labour Adolescent Decree* in 1989, which prohibits certain tasks for young people under eighteen, Aruba did not make any amendments to the 1952 WRO, see section 7.3.1.

In the early 1950s two local ordinances, neither of which made any reference to the age of the offenders, were adopted with aim of controlling prostitution. The first, the Contagious Diseases Ordinance 1951, charged the Department of Justice and Public Works with the registration of 'persons of the female sex, who make a habit or trade of having intercourse with members of the opposite sex'.<sup>116</sup> Data, such as names, ages and addresses, were to be deposited with one of a number of nominated physicians.<sup>117</sup> In addition, an Article of the Aruban Island Ordinance 1952, 'Public Morals and the Protection of Animals' aimed at the control of the public nuisance of soliciting.<sup>118</sup> Both ordinances form part of the 1991 Criminal Code of Aruba.

#### **6.3.4. Assessing the consolidation period**

Since the prohibition of child labour there have been few changes until the late 1970s. Once the need for compulsory education had been accepted, little attention was paid to out-of-school economic activities of children.<sup>119</sup> The view, that children ought to spend their lives preparing for adulthood in education or at play, protected from care and unpleasantness, has dominated much of the thinking of the twentieth century. A child's day was punctuated by school attendance. Both educational and economic activities were regulated strictly according to age by the 1940s, something which appeared to be quite haphazard in earlier periods. Although children and young people worked both after school and during the vacation,<sup>120</sup> the issue of child work received

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<sup>116</sup> Besmettelijke Ziektenverordening, P.B. 1921, no. 66, Art. 34a.

<sup>117</sup> Besmettelijke Ziektenverordening, P.B. 1921, no. 66, Art. 34b.

<sup>118</sup> P.B. 1952, No. 4, Art. 49: 'Women, standing or sitting on the public road, who by gestures or movements call the attention of passers-by, or who, sitting between 9 p.m. and sunrise on steps or pavements, if they are ordered by the police to desist or to leave, have to obey promptly.'

<sup>119</sup> Neve, J.H. and P. H. Renooy. (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*, p. 3.

<sup>120</sup> This was perhaps more common in the U.S., see Aronson, P. J., J. T. Mortimer, *et al.* (1996). 'Generational Differences in Early Work Experiences and Evaluations'. *Adolescents, Work and Family: An Intergenerational Developmental Analysis*. J. T. Mortimer and M. D. Finch, eds. Thousand Oaks, Sage Publications, p. 25 then in the Netherlands, although children sometimes engaged in occasional work during the vacation, see footnote 113.

little attention until the early 1980s,<sup>121</sup> as the view persisted that legal regulation and compulsory schooling in the industrial world had resulted in the elimination of child labour.<sup>122</sup>

However, the satisfaction concerning the eradication of child labour in societies such as the U.S. was unfounded, as throughout the latter half of the twentieth century many young people such as migrant farm worker children, had little choice but to work thereby foregoing their chance of an education.<sup>123</sup> Others engaged in part-time jobs with little thought for security or safety provisions.<sup>124</sup> Generally the treatment of boys and girls did not differ greatly, apart from the long-standing convention that tasks of boys and girls were naturally differentiated, with domestic work inside the home generally undervalued. Far-reaching economic and societal changes took place from the mid 1970s onward. The next section discusses these changes.

#### **6.4. Period of disillusion: mid-1970s - present**

##### **6.4.1. Implications of late twentieth century changes**

The last quarter of the twentieth century saw a near-universal transformation in people's views. Facilitated by advances in communications, the ideology of the pre-eminence of free market forces was able to spread at an unprecedented rate. First of all established ideas concerning the ordering of society were turned on their head. The principle accepted in most First World countries, that society has an obligation to look after its weaker members by means of redistribution,<sup>125</sup> found itself replaced by the

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<sup>121</sup> Fyfe, A. (1989). *Child labour*, p. 1.

<sup>122</sup> According to Fyfe the International Year of the Child formed the first opportunity for the ILO and other agencies to focus attention on the issue of child labour Fyfe, A. (1989). *Child labour*, p. 134.

<sup>123</sup> In 1971 an estimated 35,000 children below twelve were at work in California fields, at times exposed to pesticide poisoning Taylor, R. B. (1973). *Sweatshops in the sun: child labour on the farm*, pp. 12, 14, see also Human Rights Watch (2000). *Fingers to the Bone: United States Failure to Protect Child Farmworkers*, Human Rights Watch, L. Tucker, ed., <http://www.hrw.org/reports/2000/fmwkrf/>, <http://www.hrw.org/reports/2000/fmwkrf/>.

<sup>124</sup> Pignatella, M. A. (1995). 'The recurring Nightmare of Child Labor Abuse -- Causes and Solutions for the 90s.' *Boston College, Third World Law Journal*, Winter, 1995, p. 171.

<sup>125</sup> It is debatable whether the principle is accepted to the same extent in the U.S. According to public opinion polls "Most people believe that the Government has a responsibility to help



notion that dependence on social welfare provisions robs people of their sense of responsibility.<sup>126</sup> This led to the idea that to be of any value, possessions should be acquired through personal effort and capable of being assigned a market price. The corollary is that taxes on income and property need decreasing in order to promote personal initiative. Instead of social transfers considered a prerequisite of the good society, the less well-off would benefit indirectly from the general economic prosperity. This neo-liberal makeover of society has serious implications for the position of children.

One of the consequences is the re-casting of children and teenagers as consumers.<sup>127</sup> The fact that the majority of young people undergo the same vicarious experiences through the media, contributes to the tendency of young people to conform to a general teenage culture, inducing them to adopt consumption patterns promoted by commercial considerations.<sup>128</sup> This has been expressed as: "In the new world order, citizenship has little to do with social responsibility and everything with creating consuming subjects."<sup>129</sup> The sense that immediate gratification is more important than preparation for an uncertain future, has caused large numbers of young

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the very poor," Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*. Cambridge, Mass., Harvard University Press, p. 244. However, Americans tended to favour 'strategies such as job training', rejecting the view that all citizens had a right to a minimum income, Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*, pp. 162, 244. In general the U.S. welfare programmes in operation since the 1930s, see footnote 48, are less comprehensive than the ones established in Western Europe during the 1940s and 1950s, Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*, pp. 81, 84, 223. Between the mid-1960s and early 1970s the programmes were considerably extended, resulting in a reduction of numbers of Americans living in poverty from 39 million in 1959 to 23 million in 1973, Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*, pp. 153-156.

<sup>126</sup> Schmidt, D. and R. E. Goodin (1998). *Social welfare and individual responsibility*. Cambridge, Cambridge University Press, pp. 17-18, 100-107.

<sup>127</sup> Kline, S. (1993). *Out of the garden: Toys, TV, and Children's Culture in the age of Marketing*. London; New York, Verso. Nieuwenhuys, O. (1992). 'Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind.' *Tijdschrift voor de Rechten van het Kind*, September 1992, p. 6.

<sup>128</sup> Deplored as "kids are stripped of their specificity, agency and histories," Giroud, (1998), *Channel Surfing; Race Talk and the Destruction of Today's Youth*, 2<sup>nd</sup> impression of the 1997 ed. Houndmills, MacMillan Press Ltd, p. 73.

<sup>129</sup> Giroud, H. A. (1998). *Channel Surfing; Race Talk and the Destruction of Today's Youth*, p. 15.

people to dismiss the education system as irrelevant, with the result that many leave school without the necessary qualifications for any kind of work.<sup>130</sup>

A further development concerns the increase in 'parental separation'.<sup>131</sup> This has resulted in a large number of one-parent families, many of which find coping with the decrease in social welfare provisions near-impossible.<sup>132</sup> Whilst presented as making citizens sufficiently self-reliant to take responsibility for their and their families' lives,<sup>133</sup> cutbacks in social programmes created opportunities to finance other neo-liberal schemes. Until recently the economic expansion of the 1990s in the countries under consideration provided the capacity to absorb the former welfare recipients as well as migrant workers. Competition by the various categories of workers allowed employers to engage personnel at cheap rates in temporary positions, while others moved operations to low-cost countries. It has been argued that teenage applicants constitute a reserve of casual labour *par excellence*,<sup>134</sup> whether motivated by poverty or conspicuous consumption.

The increasing participation of children and young people in the labour force in the developed world has been met with varying responses from the trade unions,

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<sup>130</sup> Bitensky, S. H. (1990). 'Educating the Child for a Productive Life'. *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*. C. Price Cohen and H. A. Davidson, American Bar Association Center on Children and the Law and Defense for Children International-USA, p. 167.

<sup>131</sup> Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*, p. 219.

<sup>132</sup> Sidel, R. (1996). *Keeping Women and Children last: America's War on the Poor*. New York, Penguin Books USA, pp. xiv-xv, 81-115, 143.

<sup>133</sup> Proposals for welfare-to-work reforms resulted in the *Personal Responsibility and Work Opportunity Reconciliation Act*, 1996, Pub.L. 104-193, which replaced AFDC by *Temporary Assistance for Needy Families*, whose recipients have to find work within two years, Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*, pp. 236-237.

<sup>134</sup> Mentioned in several publications on child work, such as: Moorehead, C. (1987). *School age workers in Britain today*. Anti-Slavery Society, p. 47; Bequale, A. and J. Boyden (1988). 'Child Labour: Problems, Policies and Programmes'. *Combating Child Labour*. A. Bequale and J. Boyden, eds. Geneva, ILO, p. 1; Neve, J. H. and P. H. Renooij (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*, p. 3; Frederiksen, L. (1999). 'Child and Youth Employment in Denmark: Comments on Children's Work from their own Perspective.' *Childhood - a Global Journal of Child Research* vol. 6(1), p. 110.

ranging from partnerships with NGOs to combat child labour as in the U.S.,<sup>135</sup> to wholehearted support as in the Netherlands.

#### **6.4.1.1. California**

By the mid-twentieth century large sums of money had been spent on California's infrastructure, resulting in extensive road building schemes as well as irrigation systems serving an agricultural industry producing a major share of U.S. food requirements.<sup>136</sup> California grew into a society dominated by the car culture, where non-car owners have little chance of finding work.<sup>137</sup> The neo-liberal revolution saw one of its earliest manifestations in California, with the 1978 passage of 'Proposition 13'<sup>138</sup> cutting property tax used for school funding and social transfers by approximately 25 percent.<sup>139</sup> Although the 1990s constituted a period of economic prosperity for the U.S. including California,<sup>140</sup> inequalities nevertheless soared.<sup>141</sup> The increase in one-parent households, aggravated by cutbacks in funding of social programmes, has led to growing poverty of families with children.<sup>142</sup> This development has affected all three 'States' in the comparison.<sup>143</sup>

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<sup>135</sup> Fyfe, A. and M. Jankanish (1996). *Trade Unions and Child Labour: A guide to action*. Geneva, ILO, pp. 59-60.

<sup>136</sup> Rolle, A. (1997). *California: a History*, pp. 454, 478.

<sup>137</sup> O'Regan, K. M. and J. M. Quigley (1996). 'Teenage Employment and the Spatial Isolation of Minority and Poverty Households.' *Journal of Human Resources* vol. 31(3), p. 693.

<sup>138</sup> California Constitution, Art. XIII A, 'Tax Limitation', 1(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property', <http://primary2000.ss.ca.gov/VoterGuide/Propositions/13text.htm>, see also Schrag, P. (1999). *Paradise lost*, pp. 132-133.

<sup>139</sup> 'Explaining California's Missippification,' *U.S. News & World Report*, 18/05/1998, p. 32. Per pupil spending ranks 35<sup>th</sup> of all states, 41<sup>st</sup> in the percentage of children in poverty, Children's Defense Fund (2000). *Children in the States*. Washington, Children's Defense Fund, p. 14.

<sup>140</sup> \$2.4 billion budget balance for financial year 1999, Children's Defense Fund (2000). *Children in the States*, p. 15.

<sup>141</sup> 20.5 percent of U.S. children, but 25.2 percent of California's children were poor, Children's Defense Fund (2000). *Children in the States*, p. 14; Relative child poverty is highest in the U.S. among the non-transition countries, Bradbury, B. and M. Jäntti (1999). *Child Poverty across Industrialized Nations*. Florence, UNICEF International Child Development Centre, p. 67.

<sup>142</sup> E.g. by the 1996 revision of AFDC.

<sup>143</sup> For the U.S., see Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*, p. 219; in the Netherlands the number of single-parent households has increased from fewer than 200,000 in the 1970s to 345,000 in 1998, Snel, E., *et al.*, eds.

The 1980s also saw an unparalleled increase in advertising to children and young people in the U.S. with the *de facto* deregulation of children's television advertising in 1984. As a result the 1974 guidelines of the Federal Communication Commission were discarded<sup>144</sup>, paving the way for methods of persuasion which emphasised solidarity with peers through the acquisition of particular products.<sup>145</sup> Guidelines were tightened again with the adoption of the 1990 *Children's Television Act*,<sup>146</sup> limiting the amount of advertising to between ten and a half to twelve minutes per hour,<sup>147</sup> however, without any attempt to regulate content.

A number of Californian schools made an attempt to supplement their coffers by mobilising the fundraising capacities of students.<sup>148</sup> The need for cash caused many schools to turn to the business community for sponsorship<sup>149</sup> or by subscribing to Channel One', a TV advertising company targeting teenage consumers.<sup>150</sup> The latter scheme provides schools with \$50,000 worth of electronic equipment on condition that a minimum of ninety percent of students watch a daily broadcast consisting of ten minutes of current affairs followed by two minutes of commercials, a programme heavily criticised because of the blurring of reality and advertising.<sup>151</sup> The profitability of the operation speaks from the figures. According to Fox the Company broadcasts 700

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(2001). *Kinderen in armoede: opgroeien in de marge van Nederland*. Assen, Van Gorcum, p. 15; interview AR-B in connection with Aruba.

<sup>144</sup> Based on the argument, that "marketplace forces can better determine appropriate commercial levels than our own rules," FCC, 1984, p. 33598 in Kunkel, D. (1991). 'Young Minds and Marketplace Values: Issues in children's Television Advertising,' *Journal of Social Issues*, p. 68. Priority was given to private enterprise over the protection of children, despite research evidence suggesting that young children experience difficulty distinguishing perceptually between programs and commercials, quoted in Kunkel, 'Young Minds and Marketplace Values: Issues in children's Television Advertising,' p. 62.

<sup>145</sup> Kline, S. (1993). *Out of the garden: Toys, TV, and Children's Culture in the age of Marketing*, p. 165.

<sup>146</sup> Pub.L. 101-437, Title I, § 102, Oct. 18, 1990, 104 Stat. 996.

<sup>147</sup> Applicable only to over-the-air broadcast television, Kunkel, D. (1991). 'Young Minds and Marketplace Values: Issues in children's Television Advertising,' p. 59.

<sup>148</sup> See Section 6.4.1.1.

<sup>149</sup> E.g. in exchange for the placement of vending machines on school premises, Fox, R. (2000). *Harvesting minds: how TV commercials control kids*. Westport, Connecticut, Praeger, p. 2, confirmed by interview respondent CA-I.

<sup>150</sup> U.S. students age twelve to eighteen spend \$80 billion per year, Fox, R. (2000). *Harvesting minds: how TV commercials control kids*, p. 8.

advertisements a year exclusively to schools, whilst several of the advertised products are sold from vending machines placed in schools,<sup>152</sup> an operation resulting in takings of over \$100 million per year. Especially in societies such as the U.S., where children spend large amounts of time in front of the television, linkages can be made between the time spent watching advertisements,<sup>153</sup> several of which underline the importance of investing in certain products to enhance one's self-image,<sup>154</sup> and children's buying habits.<sup>155</sup> Instead of continually having to ask their parents to purchase such items for them, many young people prefer to rely on sources of finance they can control.<sup>156</sup> In consequence, whether their motivation to look for employment stems from the commercialisation of young people or from increased poverty, employers have plenty of cheap and willing workers at their disposal. An obvious source of employment is the fast-food industry, able to absorb large numbers of unskilled, part-time, teenage workers because of the rationalisation of its procedures.<sup>157</sup> Whilst the majority of young people doing this type of work are over the age of sixteen, fourteen and fifteen year olds are also allowed to work in fast food restaurants,<sup>158</sup> for up to eighteen hours a week, provided this takes place outside school hours. However, one may still disagree with the hours and times young people may legally be at work, resulting, for instance,

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<sup>151</sup> 'Commercials are constructed to look like public service announcements', Fox, R. (2000). *Harvesting minds: how TV commercials control kids*, p. 2.

<sup>152</sup> Fox, R. (2000). *Harvesting Minds: how TV commercials control kids*, Westport, Praeger, p. 2.

<sup>153</sup> 'Commercials effectively penetrate students' language and thinking', Fox, R. (2000). *Harvesting minds: how TV commercials control kids*, p. 5.

<sup>154</sup> See Chapter 2, Section 8, 'The message, that buying the right products helps making a satisfying self', Friedman, L. M. (1994). 1st ed. 1990, *The Republic of Choice*. Cambridge, Mass, Harvard University Press, p. 131 as well as meet with peer group approval, 'peer groups assume critical importance', Mussen, P. H., J. J. Conger, *et al.* (1990). *Child development & personality*. New York, Harper Collins, p. 601.

<sup>155</sup> See Chapter 2, Section 8.

<sup>156</sup> Save the Children (1998). 'Children's perspectives on work'. *Children and work in the UK: reassessing the issues*. B. Pettit. London, Child Poverty Action Group, p. 63-64, confirmed by child respondents Ch130CA and Ch131CA in the present study.

<sup>157</sup> Ritzer, G. (1993). *The McDonaldization of Society*. Thousand Oaks, Pine Forge Press, p. xiii.

<sup>158</sup> Fourteen and fifteen year olds may be employed in any occupation not prohibited by federal regulation [LC 1294.1, CFR 570.32, 570.33(a) or under state law [LC 1294.1 and 294.3], for abbreviations, see glossary.

in a guaranteed night rest of as little as four and a half hours for sixteen year olds.<sup>159</sup> In addition, frequent contraventions of the legislation have been reported in particular in the fast food sector.<sup>160</sup> These have in several instances resulted in serious accidents, due to a poor understanding of the implications of certain tasks by the young worker and her parents, as well as lack of enforcement of health and safety measures. Many of these young people engaged in such part-time restaurant work or in low paid agricultural work<sup>161</sup> are of Latin American origin, whose parents may have poor command of written English, which compounds the problem of understanding the position of their sons and daughters. Many are also undocumented, which puts them in an even more precarious position,<sup>162</sup> as they are afraid to make any complaints.

#### **6.4.1.2. Netherlands**

Many of the forces operative during the last quarter of the twentieth century in the U.S. also left their stamp on the Netherlands, for instance in the increased inequality and flexibility in working patterns affecting young workers above all. Yet Dutch research concerning Ritzer's model for the process of rationalisation,<sup>163</sup> found little of the predicted downgrading effect on the quality of labour compared with the U.S. context, as only a small percentage of jobs was characterised. Although child poverty is also found in the Netherlands,<sup>164</sup> the most serious effects are alleviated through social

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<sup>159</sup> Labor Code LC 1391.

<sup>160</sup> Based mainly on U.S. figures, see e.g. General Accounting Office (1990a). *Child Labor. Increases in Detected Child Labor Violations throughout the United States*, GAO-HRD/HRD-90-116, Washington, General Accounting Office. Butterfield, B.D. (1990a). 'Children at Work. The Tragedy of Child Labor in America's Shops, Eateries and Farms. Conditions Endanger a New Generation. *The Boston Globe*, 22 April 1990, p.1.

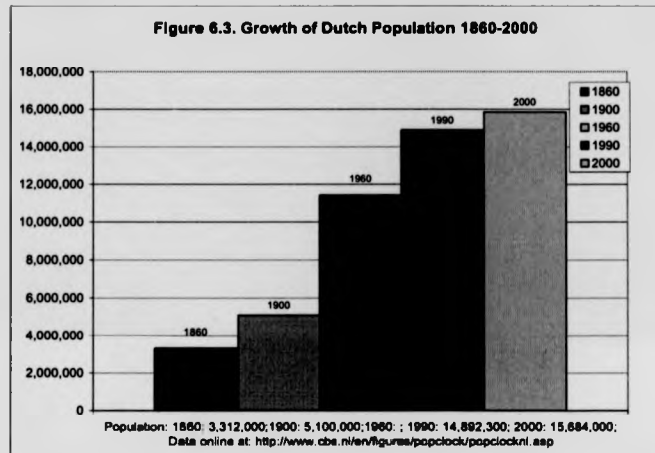
<sup>161</sup> Taylor, R. B. (1993). *Sweatshops in the sun: child labour on the farm*; Human Rights Watch, L. Tucker, ed. *Fingers to the Bone: United States Failure to Protect Child Farmworkers*.

<sup>162</sup> 'Proposition 187', approved by Californian voters in 1994, which would have denied school-age children residing illegally in California free public education and welfare benefits, was declared unconstitutional when challenged in court, *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995).

<sup>163</sup> See S. 6.4.1.1.

<sup>164</sup> In particular among ethnic minorities, *Poverty Monitor* 1999, using the OECD definition of relative poverty <http://www.scp.nl/boeken/cahlers/cah163/uk/Samenvatting.htm>.

transfers to benefit children under sixteen (eighteen if in education).<sup>165</sup> by a low level of autonomy and complexity.<sup>166</sup>



In other aspects the Netherlands are less dissimilar: the teenage market is seen as important and a modicum of television advertising is permitted,<sup>167</sup> whilst sponsorship of schools to promote brand-name recognition<sup>168</sup> is restricted from aggressive marketing through a concordat between the education authorities and industry.<sup>169</sup>

<sup>165</sup> Taxes and social insurance contributions amount to 27 percent of disposable income, the highest of all Western countries, Bradbury, B. and M. Jäntti (1999). *Child Poverty across Industrialized Nations*, p. 63.

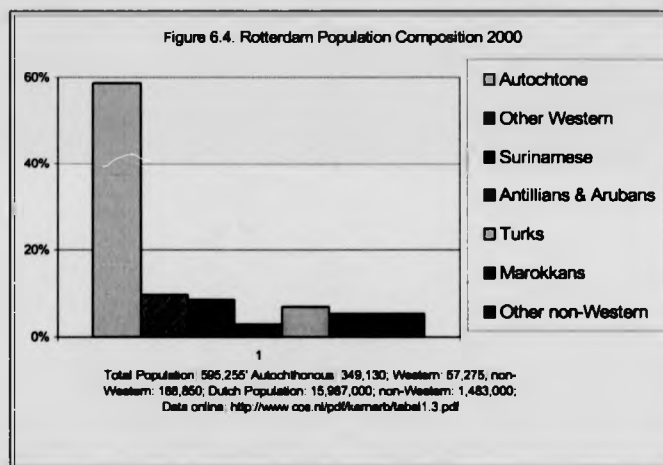
<sup>166</sup> 'No more than fourteen percent of jobs, see Steljn, B. and M. de Witte (1997). 'The Dutch Labor Market: threatened by McDonaldization?' *Sociale Wetenschappen*, p. 45.

<sup>167</sup> Television advertising is restricted by the EU *Television without frontiers directive* (89/552/EEC), implemented in the Netherlands, which supports the Swedish proposal to strengthen European regulations, [http://www.unesco.org/courier/2001\\_09/uk/medias.htm](http://www.unesco.org/courier/2001_09/uk/medias.htm). Art. 11.5. 'Children's programmes, when their programmed duration is less than 30 minutes shall not be interrupted by advertisements', Art. 16 (a). '... It shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity'.

<sup>168</sup> <http://www.kennisnet.nl/inhoud/meedoen/goedkeuring/reclamecode/>.

<sup>169</sup> A voluntary code of practice concluded 13/02/1997 between industry and Dutch teachers' unions concerning business sponsorship, <http://www.minocw.nl/persberichten/1997/025.html>.

In contrast with California, a State built on immigration, the Netherlands did not become a multi-cultural society until after World War II, with migrant workers imported from Turkey or Morocco, Antillians and Arubans arriving for purposes of study or employment,<sup>170</sup> and lately asylum seekers from all over the world,<sup>171</sup> many of whom lead a precarious existence.<sup>172</sup> As is generally common in immigrant communities, most of these newcomers settled in major cities such as Rotterdam.



As a number of immigrants and refugees lack residence permits, sections of the population are without any means of support other than informal work, such as cleaning, newspaper delivery or industrial homework, in which children have been

<sup>170</sup> Antillians and Arubans are Dutch nationals by virtue of being members of the Kingdom, Chapter 1, Art. 1(1)(g), *Wet op het Nederlanderschap*, Stb. 1984/628, amended by Stb. 2003/113.

<sup>171</sup> Rather than between 'whites' and 'ethnic minorities', the Dutch census distinguishes between *autochthonous* (Dutch by birth) and *allochthonous*. The latter are defined by the Central Bureau of Statistics (CBS) as 'persons born outside the Netherlands, or, with at least one parent born outside the Netherlands', therefore third generation immigrants are recorded as 'autochthonous', <http://www.cbs.nl>.

<sup>172</sup> Morelli, C. and Braat, K. C. (1999), *Kinderen zonder status: Een oriënterende studie naar de leefsituatie van 'illegale kinderen' in Nederland*, Amsterdam, Defence for Children International Nederland, pp. 28-29; Braat, K. C. (2004), *Ik ben er wel, maar ze zien me niet: ervaringen van illegale kinderen in Nederland*, Amsterdam, Defence for Children International Nederland, pp. 52-53.



known to participate until late at night.<sup>173</sup> Also, undocumented children failed to attend school being charged with looking after younger siblings. In addition, there have been reports of unaccompanied asylum seeking children disappearing from the asylum seeker centres, in all probability into the prostitution circuit.<sup>174</sup>

As mentioned above, a number of organisations, such as the Trade Union Federations, offer support to children young people. Young people in employment or education are welcome to join the youth sections of the Trade Union Federations, FNV and CNV,<sup>175</sup> as recommended at a conference on child labour.<sup>176</sup> Children and young people are encouraged by the unions to enter into a contract in order to safeguard their labour rights, as 'undeclared work' is contrary to EU regulations.<sup>177</sup> In addition, the unions form an important source of information concerning part-time and informal youth work by the provision of information packs<sup>178</sup> and the publication of surveys of work by particular age-groups.<sup>179</sup> Other sources of support, which have been available to young people in the Netherlands since the mid-1980s, are the *Jeugd Informatie Punten* (Youth Information Points) and the *Kinderrechtwinkels* (Children's Legal Aid Centres),<sup>180</sup> both of which help young people with all kinds of questions, including issues regarding work or sexual problems.

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<sup>173</sup> Morelli, C. and K. Braat (1999). *Kinderen zonder status*. Amsterdam, Defence for Children International, pp. 62-63.

<sup>174</sup> Morelli, C. and K. Braat (1991). *Kinderen zonder status*, pp. 41-43, 91-92.

<sup>175</sup> See Glossary.

<sup>176</sup> FNV (1995). *Een Baan om de Aarde, naar een Rechtvaardige Wereld-arbeidsmarkt; Conferentie Verslag*. Amsterdam, FNV Internationale Zaken, p. 12.

<sup>177</sup> <http://home.fnv.nl/bijbaan/content/rechten.html>, page 1. 'Informal, undeclared work', has so far not been prohibited by Dutch law, despite recommendations by the EU Commission on undeclared work. Communication of the Commission on Undeclared Work, 1998, (COM(98)219 of 7.4.1998), pp. 4-9.

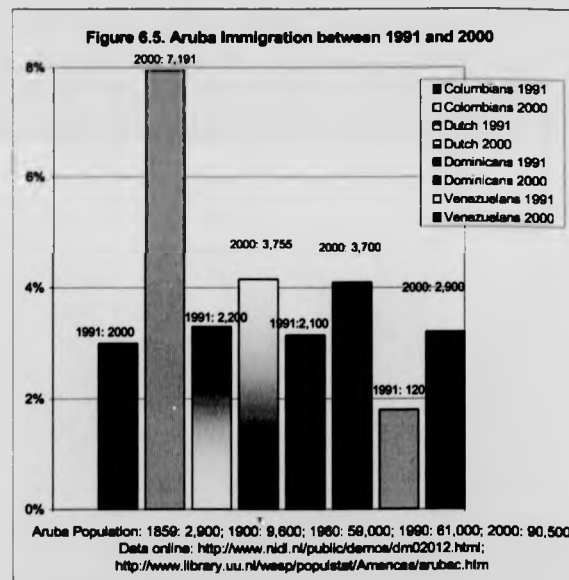
<sup>178</sup> FNV (1998). *Het Vakantiewerk-dossier*. Amsterdam, FNV.

<sup>179</sup> FNV Jongerensecretariaat (1998). *Onderzoek naar vakantiewerk en bijbanen van dertien- en veertienjarigen*. Amsterdam, FNV.

<sup>180</sup> The first Centre for 'Children's Legal Aid' in Amsterdam, established by de Langen, de Langen, M. (1992). 'The Meaning of Human Rights for Children'. *The Ideologies of Children's Rights*. M. D. A. Freeman and P. Veerman, eds. Dordrecht, Martinus Nijhoff Publishers, p. 263.

#### 6.4.1.3. Aruba

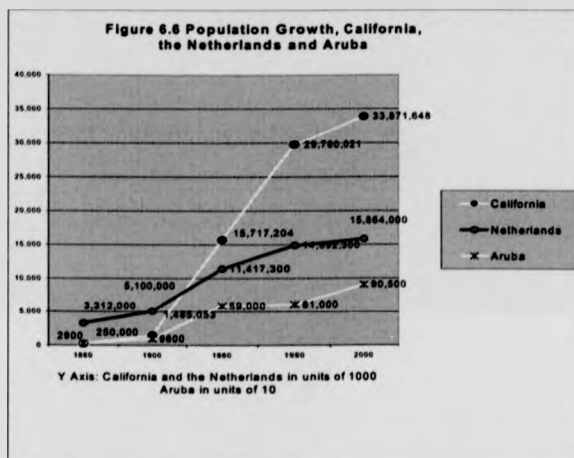
Although the island has many of the outward trappings of a First World country, its social structure seems to hark back to the middle of the twentieth century. Young people tend to be treated as children if under fourteen, but may work once they reach that age. School finishes at one o'clock, leaving students with little to keep themselves occupied apart from watching television, which is largely American oriented, or filling shopping bags at the many supermarkets.



Reliance on tourism has led to an unregulated building frenzy, as well as the need for cheap labour, which gave rise to a large influx of migrant workers from Latin America, many of whom are undocumented. These immigrants, including their children, have no residence permits and are exposed to the danger of sudden expulsion.<sup>181</sup> In a society, that by the end of 2002 had not yet embraced compulsory education,

<sup>181</sup> Expulsion of illegal immigrants was a common occurrence in 2000, when I visited Aruba, according to interview respondents AR-G, AR-A and AR-S.

undocumented migrant children, unable to speak the official language, are denied benefits accorded to their peers, such as schooling and social welfare, and may supplement family income by assisting shoppers until late at night.<sup>182</sup>



Until the enactment of the 1991 Criminal Code, no attempts were made to regulate sexual intercourse between adults and minors. Prostitution was treated as a public nuisance to be kept under control.<sup>183</sup> Apart from the adoption of the two ordinances mentioned earlier, the notion of prostitution and/or commercial sexual exploitation involving minors has been regarded as unthinkable.

### **6.5. Assessing the effects of the past**

Although the events of recent decades undoubtedly affect the position of children and young people more than those of the distant past, iniquities inflicted in former times on part of the population by their countrymen have repercussions in the present. Not only have communities, grown out of slavery, difficulties to come to terms with the fact

<sup>182</sup> See Chapter 6, footnote 147, confirmed by interview respondents AR-N and AR-T.

<sup>183</sup> See Section 6.2.2.1.

that their forebears were used as commodities, but they also tend to live in societies that still bear the scars of neglect.

While the reality of the toil of former generations itself has been forgotten and has little impact on the present, the memory of past humiliation and oppression lingers on. Apart from the feeling that there is no closure because of an attitude on part of the authorities that makes light of past injustice, the fact of having ancestors who suffered social exclusion on account of the colour of their skin or ethnic background, tends to set people apart. Consequently many people with ethnic minority backgrounds are not only poorer than whites, but may have become used to a pattern of rejection to the extent of feeling locked in a sense of hopelessness.<sup>184</sup> Feelings of inferiority are kept alive by the fact that citizens whose right to citizenship is not in question, may still find themselves rejected because of their ancestry, as demonstrated by the experience of Dutch job applicants with surnames associated with immigration from developing countries.<sup>185</sup> In addition, immigrants are more likely to live in overcrowded inner-city areas with little in the way of amenities and tend to feature prominently in the crime statistics both in California and the Netherlands.<sup>186</sup>

## **6.6. Connection with present-day research**

In the light of the experience of countries such as these it is no longer possible to consider child labour as regrettable practice that either lies in the past or only affects young people in developing countries. This means it can no longer be regarded as a

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<sup>184</sup> In the mid-1970s health professionals interpreted the perspective of rights as a remedy for social and mental problems among ethnic minority children, caused by inequality and discrimination, Berlin, I. N. (1975). 'We advocate this bill of rights'. *Advocacy for Child Mental Health*. I. N. Berlin, ed. New York, Brunner/Mazel. Compare the comment of respondent CA-1, supporting disadvantaged minority children twenty-five years later: "I don't think that a lot of these kids believe that there are positive possibilities - they don't believe in themselves."

<sup>185</sup> Maillard, J. (1985). 'Why hire one and not the other?' *World of Work* (12), pp. 28-30.

<sup>186</sup> According to a 1973 report, segregation of housing led to increased segregation in schools zoned by neighbourhood and town, causing increased segregation and selectivity along lines of social class and ethnic-group culture as well as greater inequality. Report of the Panel on Youth of the President's Science Advisory Committee (1974). *Youth Transition to*

*A historical perspective of child labour in the three 'States'.*

problem that in time goes away of its own accord. If those most closely involved in the economic pursuits of children and young people in the developed world believe that these activities are either nothing more than a matter of a child's whim or something that has at most some educational benefit, it makes trivial of children's efforts. The perceptions of present-day child work in the 'States' under consideration are covered in Chapter 8, while the next chapter examines child labour provisions in force in the three societies.

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*Adulthood*, pp. 83-84. Respondent CA-F used near-identical terms: "There is economic segregation in housing, there is economic segregation in schooling."

## **7. Child labour legislation in the three societies**

### **7.1. Fundamental Rights and Domestic Legislation**

This chapter compares the child labour legislation in force in the three societies. Any legislation passed in any of the three 'States' needs to conform both to all International Conventions to which the 'State' is a Party as well satisfy its Constitution, which is the basis for the fundamental rights of the 'State's' citizens. The *CRC* is the first International Instrument to designate the 'protection of children from exploitation' as a binding 'right',<sup>1</sup> owed to young people under the age of eighteen, although the language of rights has been used in the past as a device to add force to arguments to restrict the exploitation of children.<sup>2</sup>

The fact that two of the 'States' have recently adopted new or drastically amended child labour legislation, makes it possible to assess, to what extent these have been drafted in accordance with principles, such as the ones embodied by the *CRC*. Compliance with a right entails the recognition of the right in question, as well as the provision of enforcement mechanisms and procedures to test compliance in addition to the content of the legislation itself. States Parties are charged with taking legislative, administrative, social and educational measures to ensure the implementation of the right of 'protection from exploitation', including directions on how to approach the issue.<sup>3</sup> However, as neither the U.S. nor Aruba had accepted the *CRC*, unlike the European part of the Kingdom,<sup>4</sup> it is debatable, whether one can speak of the 'recognition of the rights

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<sup>1</sup> Art. 32.

<sup>2</sup> For instance, expressed as 'a right' in van Houten's 1873 proposal, see Chapter 5, footnote 7.

<sup>3</sup> States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admissions to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article. In connection with the freedom from sexual exploitation the *CRC* is less specific, only charging States Parties with preventing 'the exploitative use of children in prostitution or other unlawful sexual practises' (Art. 34(a-b)).

<sup>4</sup> By ratifying International Conventions, such as the *CRC* or the 1973 *ILO Minimum Age Convention*, a State undertakes to observe their guidelines either directly, or by incorporating the regulations in its national legislation. If Treaties are self-executing, there is no need for

set out in the CRC' in connection with either of these 'States'. The Netherlands revised its labour law, including the chapters concerned with child and youth work, shortly after ratifying the CRC.<sup>5</sup> However, procedures for ratification were set in motion as soon as the Caribbean partners had been consulted. As neither was as yet in a position to accept the Convention,<sup>6</sup> the decision was taken not to wait any longer with ratification.

The explanatory memorandum to the Bill for Ratification provides a review of the articles of the CRC as well as an evaluation of the expected impact on the position of children and young people in the Netherlands. The connection between the rights to 'education', 'rest and leisure' and 'protection from economic exploitation' was discussed in the sections covering Arts. 31 and 32.<sup>7</sup> According to the memorandum the existing regulations,<sup>8</sup> which distinguished between 'children' below the age of sixteen, i.e. both pre-school children and those of compulsory school age,<sup>9</sup> and 'youths' of sixteen and seventeen,<sup>10</sup> already satisfied the requirements of the CRC.<sup>11</sup> However, a number of exemptions were permitted by the 1984 *Regulation concerning the Prohibition of Child Labour*. According to the *Regulation* children, who were engaged in permitted

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enabling legislation, e.g. in the Netherlands, as Treaties have priority over national legislation: Art. 92-94 of the Dutch Constitution.

<sup>5</sup> *Goedkeuringswet*, accepted by both Chambers by 22 November 1994.

<sup>6</sup> Tweede Kamer der Staten-Generaal (Vergaderjaar 1992-1993). 'Memorie van Toelichting bij de Goedkeuringswet (Explanatory Memorandum to the Law of Ratification) of the Convention on the Rights of the Child presented to the Second Chamber, Kamerstukken Session 1992-1993, 22 855 (Rijkswet 1451, B), §5.

<sup>7</sup> *Memorie van Toelichting bij de Goedkeuringswet*, pp. 42-43. The importance of the interrelated spheres 'work and/or schooling', 'rest and/or leisure' in conjunction with a young person's home life, for the development of her growth towards independence was also emphasised in an advice to the Government. Raad voor het Jeugdbeleid (1995). *Sociaal talent in zicht: een advies over de bevordering van maatschappelijke zelfstandigheid van jongens en meisjes*. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, pp. 8-9.

<sup>8</sup> Such as the *Arbeidswet* 1919, *Arbeidsbesluit Jeugdigen* (Stb. 1972/652) and *Leerplichtwet*, 1969 (Stb. 1971/406, amended 1997).

<sup>9</sup> From the first day of the month after a child's fifth birthday up to the end of the school year in which the young person has attended school for at least twelve years or the end of the year in which she reaches the age of sixteen (Art. 3, *Leerplichtwet* 1969, Stb. 1971/406).

<sup>10</sup> No longer obliged to attend school full-time. However, sixteen year olds still need to attend school either one or two days a week, depending on the existence of an 'education-substitution agreement' with an employer (Arts. 3b, 4c(1), *Leerplichtwet* 1969). In addition, the possibility exists for a child, who is regarded as not benefiting from school attendance and who has reached the age of fourteen, to enter an alternative learning programme with a strong element of practical work (Art. 3a, *Leerplichtwet* 1969).

<sup>11</sup> *Memorie van Toelichting bij de Goedkeuringswet*, pp. 38-43.

employment, acquired the status of 'young persons', becoming subject to same regulations as sixteen and seventeen-year olds'.<sup>12</sup> Art. 34, 'the right to protection from sexual exploitation, was welcomed as providing a focus for the fight against commercial sexual abuse of young people'.<sup>13</sup> The memorandum called attention to the articles in the Criminal Code, which prohibit sexual acts with or in the presence of children,<sup>14</sup> and the *Wet op de Jeugdhulpverlening*.<sup>15</sup>

According to children's rights experts, the shortcomings of the approach by Dutch Government concerned the proposed reservations to the CRC rather than any policies related to the protection from exploitation.<sup>16</sup> It was expected, that the new child labour regulations would conform to the CRC, despite the fact, that the Convention has not been cited in the explanatory memorandum of the *Arbeidstijdenwet* (Working Times Act), in contrast with the *Minimum Age Convention* 1973 and the *European Social Charter* 1966.

Comments by several legal professionals made on the occasion of the ratification concerned the importance of fundamental rights for the legal position of children and young people.<sup>17</sup> It has been emphasised, that certain rights, such as 'the non-discrimination right', which in conjunction with Arts. 3, 6 and 12, the rights to 'the best

<sup>12</sup> Memorie van Toelichting bij de Goedkeuringswet, p. 43.

<sup>13</sup> Art. 250bis.

<sup>14</sup> Arts. 242-250 and 285.

<sup>15</sup> Stb. 1989/358, translated as *Law on Youth Assistance*.

<sup>16</sup> Issues mentioned are amongst other things: 'the principle issue is how the Netherlands is going to translate the central message of the CRC, "Children are no Objects, but Subjects of Rights" in practical terms. For instance, whether the institute of an ombudsman for children would be established, as proposed in a European context in Resolution A3-0172/92, concerning the establishment of a *European Charter of the Child*, Niebuhr, J. (1993). 'Commentaar van Defence for Children op de Nederlandse ontwerp-goedkeuringswet voor het Verdrag inzake de Rechten van het Kind'. *Tijdschrift voor de rechten van het Kind*, Maart 1993, pp. 8-12; Relevant is the reservation to Art. 26, 'Independent access to social security', contrary to Arts. 12 and 13 of the *European Social Charter*, Meuwese, S. (1994). 'De bespreking van het VN-Verdrag inzake de Rechten van het Kind in het Nederlandse parlement'. *Tijdschrift voor de Rechten van het Kind*, December 1994, pp. 2-4.

<sup>17</sup> Willems, A. (1992). 'Brengt het Verdrag inzake de rechten van het kind voor Nederland iets nieuws?' *De Kant van het Kind. Liber Amicorum Professor Miek de Langen*. T. de Boer et al., Arnhem, Gouda Quint, pp. 105-113, p. 105; Nederlandse Gezinsraad (1993). *Commentaar van de Nederlandse Gezinsraad; Rapport 0048*. Den Haag, Nederlandse Gezinsraad, p. 6, commenting on the explanatory memorandum, which stresses the importance of



interest of the child', 'the right to life' and the 'right of the child to express her views' are essential to the interpretation of all the rights contained in the CRC.<sup>18</sup> The Council for Youth Policy,<sup>19</sup> had earlier stressed the importance of the principle of equality in particular in relation to young people, represented by two objectives, namely: i) the promotion of equal treatment of young people and adults, and ii) the creation of conditions facilitating growth towards independence.<sup>20</sup> "The equality of all citizens is paramount."<sup>21</sup> However, when "applied to the relation 'young people - adults', the position of young people was unequal to that of adults. Therefore the second principle was essential."<sup>22</sup> The principle of equality has also found a place in the Dutch Constitution, although not aimed specifically at children and young people.<sup>23</sup>

On the hypothesis, that equality is important, when adopting legislation: the Constitutions of the two other 'States' in the comparison also contain non-discrimination principles, which with respect to the Californian Constitution are applicable to specific

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fundamental rights in conflicts resulting from the rights position of other rights subjects, *Memorie van Toelichting bij de Goedkeuringswet*, p. 10.

<sup>18</sup> See Chapter 4, footnotes 83-86.

<sup>19</sup> See Chapter 2, footnote 109.

<sup>20</sup> Raad voor het Jeugdbeleid (1984). *Jeugdbeleid, voor gelijkheid en groei: uitgangspunten, instrumenten en prioriteiten*. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 23; Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 59.

<sup>21</sup> Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39, p. 59.

<sup>22</sup> Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39, p. 60.

<sup>23</sup> Art. 1. 'All people within the territory of the Netherlands are treated equally in equal circumstances. Discrimination on the ground of religion, belief, political opinion, race, gender or any grounds whatsoever, is not permitted'. According to the explanatory memorandum, the articles concerned with the fundamental rights do not make any distinction according to age: "they apply to everyone, irrespective of age, provided the right has any substance for a child. [ . ] however, the prohibition of discrimination has such a substance", *Tweede Kamer der Staten-Generaal (Vergaderjaar 1975-1976). Handelingen, 13 872, nrs. 1-5 Verklaring dat er grond bestaat een voorstel in overweging te nemen tot verandering in de grondwet van bepalingen inzake grondrechten. Memorie van Toelichting*. s'Gravenhage, p. 11. 'Like cases must be treated alike, unless there is an objectively and reasonably justifiable ground to make a distinction.' Art. 22(3), "The Government's task is to create conditions for social and cultural development and for leisure activities," quoted in the Explanatory Memorandum to the Bill for Ratification of the CRC, *Tweede Kamer der Staten-Generaal (1992-1993). Goedkeuring van het op 20 november 1989 te New York tot stand gekomen Verdrag inzake de rechten van het kind, 22 855 (R1451)*, s'Gravenhage, SDU Uitgeverij, p. 42.

contexts only and do not include 'age' as a criterion.<sup>24</sup> In addition, children's rights have been characterised as being still an emerging claim in the U.S.<sup>25</sup> ascribed 'to the fact that children are different from adults'.<sup>26</sup> Based largely on the Dutch Constitution, the Aruban Constitution also grants rights of non-discrimination to all persons on the Island, prohibiting discrimination on 'any other grounds whatsoever'.<sup>27</sup> However, the Ordinance itself predates the Island's Constitution by over thirty years.

It is not feasible to test compliance with child labour law through the Courts, as very little case law on child labour issues is in existence, prosecution of violating employers being an exception.<sup>28</sup> Therefore a different approach has been used to evaluate the performance of the government departments implementing legislation in the different 'States'. This approach amounts to the examination of four aspects of the legislative process: i) the stated rationale for the legislation, ii) the content of the legislation, iii) the enforcement mechanisms and iv) the evaluation and justification of the enforcement procedures.

## **7.2. Rationale for child labour legislation**

The nineteenth century child labour laws in the U.S. and the Netherlands were due above all to the objective of improving the lives of children. The principal justification for the proposal for the 1874 *Child Act* was the 'right of children to care'. In addition, the State had the obligation to take over from parents, in case they were unable or unwilling

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<sup>24</sup> 'A person may not be disqualified from entering or pursuing a business, profession or employment because of sex, race, creed, color or national or ethnic origin,' Section 8 and 'The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting', Section 31.

<sup>25</sup> E.g. through the Supreme Court cases mentioned in Chapter 4, footnote 4.

<sup>26</sup> Bennett Woodhouse, B. (1999). 'The Constitutionalization of Children's Rights: Incorporating Emerging Human Rights into Constitutional Doctrine.' *University of Pennsylvania Journal of Constitutional Law*, December 1999, p. 30. Compare Chapter 2, section 2.3.1.2., 'Concepts of childhood', for the view, that children are different in nature from adults.

<sup>27</sup> Art. 2, identical to the Dutch non-discrimination article, apart from the addition of further potential grounds for discrimination: 'colour, national or social origin, belonging to a national minority, property [or] birth'.

<sup>28</sup> See Chapter 1, Section 1.1.

to fulfil their obligations towards their children<sup>29</sup>. From the 1889 amendment to the Act onward, Dutch child labour legislation has been guided by three aspects of child protection, namely their safety, health and personal development.<sup>30</sup>

The struggle by the U.S. National Child Labor Committee for the adoption of a Federal child labour law is well known.<sup>31</sup> The objective of the proponents was above all to improve the lives of exploited children. Less altruistic motives also played a role.<sup>32</sup> The main justification for child labour legislation was protection, effected by regulating the times and conditions permitting children to engage in economic activities. As expressed by the Division of Labor Standards Enforcement (DLSE) in the 1998 summary of California's child labor laws: "[they] are designed to help young people acquire work experience and income, while safeguarding their scholastic advancement and physical well-being."<sup>33</sup>

#### 7.2.1. Rationale for Californian amendments of the 1990s

Despite the objective stated above, the main reason for the amendments was due to the realisation, that the existing legislation was not being observed. Towards the late 1980s the U.S. woke up to the fact, that young people were being employed in ever

<sup>29</sup> See Chapter 6, Section 6.2.1.2., also Chapter 5, footnote 7.

<sup>30</sup> Art. 5: 'Het is verboden den arbeid van een persoon beneden zestien jaren of van eene vrouw in fabrieken en werkplaatsen vroeger te doen aanvangen dan te 5 uren des voormiddags of later te doen eindigen dan te 7 uren des namiddags, met dien verstande, dat het aantal uren, gedurende welke die arbeid wordt verricht, niet meer dan 11 per etmaal bedrage'.

Art. 6: 'Hij die een persoon beneden zestien jaren of eene vrouw arbeid doet verrichten in fabrieken of werkplaatsen is verplicht te zorgen, dat die arbeid ten minste wordt afgewisseld door een rusttijd van een uur tussen 11 uren des voormiddags en 3 uren des namiddags'.

Art. 7: 'Het is verboden een persoon beneden zestien jaren of eene vrouw op Zondag arbeid te doen verrichten in fabrieken of werkplaatsen', see also Neve, J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*. s'Gravenhage, Ministerie van Sociale Zaken, p. 13.

<sup>31</sup> Trattner, W. I. (1970). *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*. Chicago, Quadrangle Books.

<sup>32</sup> The New England Association of Farmers, Mechanics and Other Workingmen condemned child labour at their 1832 convention. "[T]he unions correctly noted that competition from children depressed wage scales . . ." Trattner, W. I. (1970) *Crusade for the Children; a history of the National Child Labor Committee and Child Labor reform in America*, p. 30.

<sup>33</sup> Other goals may be inferred from parliamentary discussions, hearings, correspondence or reports from advisory bodies. For instance, issues of promotion and participation may be as

increasing numbers.<sup>34</sup> Violations of the federal child labour law rose from 10,000 in 1983 to over 40,000 in 1990.<sup>35</sup> In many cases violations occurred in disregard of child labour provisions and ordinary health and safety standards,<sup>36</sup> giving rise to high accident figures. However, the lack of comprehensive statistical reporting<sup>37</sup> precluded California from drawing any conclusions concerning occupational injuries and deaths of children in the State. Until that time teenage work was considered beneficial, capable of promoting age integration and an opportunity for youth to learn how to act responsibly.<sup>38</sup>

Although a number of studies on the consequences of part-time work of young people were conducted during the 1980s and early 1990s,<sup>39</sup> the findings were not discussed in either the California House of Representatives or the Senate.<sup>40</sup> To all appearances the debates were conducted without the benefit of an extensive body of existing research.<sup>41</sup> Several acts were adopted during the 1990s,<sup>42</sup> the first one, the 1993

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important for young employees - sixteen and seventeen year old workers - as for adults.  
<http://www.dir.ca.gov/DIRNews/1998/IR98-22.html>.

<sup>34</sup> Compulsory education applies to young people from six to eighteen. However, a sixteen year old can leave school with a 'certificate of proficiency' (EC 49101; LC 1286).

<sup>35</sup> The figure includes violations found during four child labour 'sweeps', General Accounting Office (1990a). *Child Labor: Increases in Detected Child Labor Violations throughout the United States, Report to the Honorable Don J. Pease, House of Representatives, GAO/T-HRD/HRD-90-116*, Washington, United States General Accounting Office. According to Congressman Lantos Child labour violations were found at over 40 percent of investigated businesses, Lantos, T. (1992). 'The Silence of the Kids: Children at Risk in the Workplace.' *Labor Law Journal*, vol. 43(2), p. 68.

<sup>36</sup> General Accounting Office (1990b). *Child Labor Violations and Sweatshops in the U.S., GAO/T-HRD-90-18*. Washington, General Accounting Office.; General Accounting Office (1991a). *Child Labor; Characteristics of Working Children, GAO/HRD-91-83BR*. Washington, General Accounting Office.

<sup>37</sup> Note (e) to Labor Code § 1393.1.

<sup>38</sup> Report of the Panel on Youth of the President's Science Advisory Committee (1974). reprint of 1973 ed. *Youth Transition to Adulthood*. Chicago, University of Chicago Press, pp. 131-132, 147-148.

<sup>39</sup> Greenberger, E. and L. D. Steinberg (1986). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*. New York, Basic Books.

<sup>40</sup> See Chapter 2, Section 2.7.

<sup>41</sup> Nor were any of the 421 advisory reports presented to the Legislature between 1988 and 1999 concerned with the employment of minors (Search of Witkin State Library report database, confirmed by telephone conversation with the Law Librarian).

<sup>42</sup> i) The *Omnibus Child Labor Reform Act* of 1993; ii) An act to amend Section 49116 of the Education Code and Sections 1286-1393 of the Labor Code, relating to employment, 1995, iii) An act to add Section 1308.8 to the Labor Code, 'relating to employment of infants under age one month', 1998, iv) An act to add Section 1295.5 'Sports attending' of the Labor Code.

*Omnibus Act* in response to the high level of infringements<sup>43</sup> and the number of alarming accidents.<sup>44</sup> The amendments<sup>45</sup> aimed at making teenage work safer and less demanding by restricting working hours and increasing fines to Federal level.<sup>46</sup> Working for parents was no longer allowed in occupations otherwise restricted as unsafe for young and unskilled workers,<sup>47</sup> such as farm work, which has been described as one of the most hazardous industries in California.<sup>48</sup>

However, a proposal to raise the age at which minors would be allowed to deliver newspapers was defeated, due to opposition from the California Newspaper Publishers.<sup>49</sup> Other amendments were concerned with not-for-profit door-to-door selling of sweets or magazines by children under sixteen,<sup>50</sup> traditionally regarded a beneficial fundraising activity, and permitted, provided the proceeds went to *bona fide* charities, registered with the Labor Commissioner.<sup>51</sup>

During session 1997/1998 the legislature turned its attention to the film industry. An Act prohibiting employment of infants of under one month in California's film studios

<sup>43</sup> The Department of Industrial Relations reports that a single inspection in Orange County found eleven minors, one of which was only ten years old, working illegally in the fields. LC-1393 contains an annotation to the effect that the legislature found, that 'Child labor law violations continue to be a serious problem in many different Californian industries (Section 1 of Statute 1994 Ch 1175(a)).

<sup>44</sup> Cogbill, T. H., H. M. Busch, *et al.* (1988). 'Farm Accidents in Children.' *Pediatrics*, pp. 562-566; Heyer, N. J., G. Franklin, *et al.* (1992). 'Occupational Injuries among Minors Doing Farm Work in Washington State: 1986 to 1989.' *American Journal of Public Health* vol. 82(4), April 1992, pp. 557 - 560.

<sup>45</sup> [http://www.leginfo.ca.gov/pub/95-98/bill/sen/sb\\_0401-0450/sb\\_443\\_bill\\_951016\\_chaptered.html](http://www.leginfo.ca.gov/pub/95-98/bill/sen/sb_0401-0450/sb_443_bill_951016_chaptered.html).

<sup>46</sup> [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_1851-1900/ab\\_1900\\_bill\\_940830\\_enrolled](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1851-1900/ab_1900_bill_940830_enrolled).

<sup>47</sup> 8-CCR-11707 (California Code of Regulations).

<sup>48</sup> According to the UC Agricultural Health and Safety Center at Davis, at least forty-two children under the age of fifteen died as a result of farm related accidents in California between 1980 and 1989, [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_1501-1550/ab\\_1516\\_cfa\\_930413\\_130127\\_asm\\_comm](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1501-1550/ab_1516_cfa_930413_130127_asm_comm).

<sup>49</sup> [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_1851-1900/ab\\_1900\\_cfa\\_930413\\_130227\\_asm\\_comm](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1851-1900/ab_1900_cfa_930413_130227_asm_comm). The age was subsequently raised to twelve, LC-1298(b).

<sup>50</sup> [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_1851-1900/ab\\_1900\\_bill\\_930305\\_introduced](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1851-1900/ab_1900_bill_930305_introduced).

<sup>51</sup> [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_1851-1900/ab\\_1900\\_bill\\_940930\\_chaptered](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1851-1900/ab_1900_bill_940930_chaptered). See also 'The Fundraising Edge', commending such activities with the phrase: "Community service and volunteerism are natural extensions of good citizenship." <http://www.afrcs.org/fundedge.html>. The Child Labor Coalition claims, that

without a medical certificate<sup>52</sup> and amendments to the *Family Code*<sup>53</sup> regulating the contracts of child actors were introduced as a result of campaigns by a support group of former child actors.<sup>54</sup> The amendment was, however, opposed by a number of parents.<sup>55</sup>

Further amendments were due to recommendations by the California Study Group on Young Workers, as the level of preventable work place accidents remained unacceptably high.<sup>56</sup> It was intended to create a resource network designed to raise awareness of health and safety issues and of legal provisions for the benefit of individuals involved in child labour matters, such as personnel charged with granting work permits to pupils, teachers and parents.<sup>57</sup> The Bill was, however, rejected by the Appropriations Committee.<sup>58</sup> In consequence, the only result consists of an information website.<sup>59</sup>

#### 7.2.2. Rationale for the 1990s Dutch labour legislation

As the 1919 *Labour Act* was no longer able to stimulate a faltering labour market, a decision was taken to enact new legislation, allowing for more flexible working hours, whilst taking account of International Instruments, such as the *ICESCR*, *ILO*

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many of these schemes take advantage of children, who often work unsupervised for little pay, see <http://www.stopchildlabor.org/doortodoor.html>.

<sup>52</sup> [http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab\\_0701-0750/ab\\_744\\_bill\\_19980804\\_chaptered.html](http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0701-0750/ab_744_bill_19980804_chaptered.html).

<sup>53</sup> Section 6750.

<sup>54</sup> <http://www.minorcon.org/> and <http://www.sag.org/spotlite.html>; contracts for child actors discussed in Senate and Assembly Committee at: [http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb\\_1151-1200/sb\\_1162\\_cfa\\_19990823\\_231423\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_1151-1200/sb_1162_cfa_19990823_231423_sen_floor.html) and [http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb\\_1151-1200/sb\\_1162\\_cfa\\_19990621\\_173636\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_1151-1200/sb_1162_cfa_19990621_173636_asm_comm.html).

<sup>55</sup> "[they] argue that where the earnings are below a certain threshold level, the bill's requirements are too onerous, and do not serve the best interest of child actors and performers. [They] also take exception with what they view as unnecessary and inappropriate interference with personal and familial matters."

<sup>56</sup> Labor Code 6359 (a) Each year 70 adolescents die from work injuries in the United States and 200,000 are injured, 70,000 serious enough to require hospital treatment," whilst "several children die in California and hundreds are hurt from unintentional injury. Many of these injuries occur on the job site and could be prevented with proper, informed screening by being educated," [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_1551-1600/ab\\_1599\\_cfa\\_20000919\\_214605\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1551-1600/ab_1599_cfa_20000919_214605_sen_floor.html).

<sup>57</sup> LC-6359, <http://caselaw.lp.findlaw.com/cacodes/lab/6350-6359.html>.

<sup>58</sup> Status: "Died pursuant to Art. IV, Sec. 10(c) of the Constitution," [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_1651-1700/ab\\_1653\\_bill\\_20000203\\_status.html](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1651-1700/ab_1653_bill_20000203_status.html).

<sup>59</sup> <http://socrates.berkeley.edu/~safejobs/>.

Conventions, the *European Social Charter* and several Council Directives.<sup>60</sup> Regulations for children<sup>61</sup> and young workers form an integral part of a system of rules aiming at the 'protection of employees from working hours, which might damage safety and health or impede participation in social life'.<sup>62</sup> The explanatory memorandum to 1995 *Further Child Labour Regulation (NRK)* in addition, refers to the ILO *Minimum Age Convention* and Directive 94/33/EC.<sup>63</sup>

The rationale for the Chapters of the *Acts* related to children and youths can be gained from preliminary surveys and the correspondence between the two advisory councils and the Department of Social Affairs and Employment (SZW) as well as from Parliamentary debates and the explanatory memoranda contained in the *Acts*.

#### *Preliminary surveys*

The Department of SZW began by commissioning a number of surveys conducted during 1989 and 1990, as it had been reported, that children and young people increasingly worked in contravention of the existing legislation.<sup>64</sup> The surveys were based on questionnaires completed by young people between seven and seventeen, including ethnic minority children<sup>65</sup> and on interviews with children active in the entertainment sector. In addition, interviews were conducted with experts on child work

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<sup>60</sup> Introduction to Asscher-Vonk, M. I. P. (1999). *Arbeidswetgeving*. Deventer, Kluwer, p. XXIV.

<sup>61</sup> 'Children' are persons up to age sixteen, in accordance with the ages used in the *Leerplichtwet* 196, excepting special rules for fourteen-year olds; 'young workers' are between sixteen – still obliged to follow partial education - and eighteen years of age, see footnotes 9-10, this Chapter.

<sup>62</sup> Geers, A. J. C. M. and G. J. J. Heerma van Voss (1994). 'De Overheid treedt terug: de nieuwe Arbeidstijdenwet.' *Sociaal Recht*, vol. 9, May 1994, pp. 136-143, Tweede Kamer der Staten-Generaal (1988-1989). *Bijlage Handelingen Tweede Kamer; Bijzondere categorieën werknemers* 7.; 21083; nr. 1. Tweede Kamer, p. 136.

<sup>63</sup> van Drongelen, J. and P. H. Vos (1996). *Arbeidstijdenwetgeving*. Zwolle, Tjeenk Willink, p. 169.

<sup>64</sup> van Geuns, R. C., J. W. M. Mevissen, et al. (1986). *Informele economie : perspectieven en gevaren*. Leiden, Spruyt, Van Mantgem & De Does, p. 69.

<sup>65</sup> Neve and Rensoo *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*, pp. 22-23, 104; van Beckhoven, A. P. M. (1991a), Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugd arbeid, p. iii; van Beckhoven, A. P. M. (1991b), Evaluatie richtlijnen voor het optreden van kinderen, Den Haag, Ministerie van Sociale Zaken en Werkgelegenheid, Directoraat-Generaal van de Arbeid door Regioplan Onderzoek en Adviesbureau voor Regionale Economie en Locale Ontwikkelingen, p. iv.

and education,<sup>66</sup> as well as employers, members of the labour inspectorate, teachers and youth leaders, including representatives of ethnic minorities.<sup>67</sup> The first survey focused on the extent of youth employment,<sup>68</sup> the second on the activities of young performers,<sup>69</sup> whilst the third was concerned with the conditions of employment and the motivations of young people.<sup>70</sup> According to the findings more responsibility should be granted to young people in accordance with the interests of young people as expressed by themselves.

*Recommendations from advisory bodies*

The child labour provisions of the 1995 *Arbeidstijdenwet* (*Working Times Act*, hereafter: *AtW*) have been framed in accordance with the advice from the Council for Youth Policy. The Council stressed the importance of the protection of the physical, emotional and mental development of young people, whilst advocating greater responsiveness to their need for participation in society in accordance with the principle of equality mentioned earlier. Other requirements concerned the importance of equal treatment of employees under and over eighteen, as stimulating young people's growth towards autonomy. However, the Council recommended, that the prohibition of work by young people under sixteen, i.e. of compulsory school age in the Netherlands, be continued, as children tend to overtax their strength and experiment, whilst lacking experience.<sup>71</sup> In addition, the Council pointed out, that young people need more sleep than adults, being at a period of their life during which major physical and mental

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<sup>66</sup> Amongst others, a member of the youth section of one of the Trade Union Federations and the professor of youth law at Amsterdam University, see Chapter 4, section 4.5.

<sup>67</sup> Neve, J. H. and Renooy, P. H. (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*, p. 119; van Beckhoven, A. P. M. (1991a), *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugd arbeid*, p. ii.

<sup>68</sup> Neve, J. H. and P. H. Renooy (1989). *Kinderarbeid in Nederland. Een verkennend onderzoek naar omvang en verschijningsvormen van kinder en jeugd arbeid in Nederland*.

<sup>69</sup> van Beckhoven, A. P. M. (1991b), *Evaluatie richtlijnen voor het optreden van kinderen*.

<sup>70</sup> van Beckhoven, A. P. M. (1991a), *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugd arbeid*.

<sup>71</sup> Raad voor het Jeugdbeleid (1990a). *Jong geleerd oud gedaan? : een advies over de positie van kinderen en jeugdigen in de nieuwe arbeidstijdenwet*. Rijswijk, Raad voor het Jeugdbeleid, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 12.



changes are known to take place.<sup>72</sup> It also stated that exemptions from the prohibition of child labour for younger children, below the age of twelve, i.e. of primary school age, could be justified only in order to allow them to participate in theatrical performances and the like. Restrictions on working hours were needed in connection with the obligatory part-time school attendance requirement of sixteen and seventeen-year olds, whilst the prohibition of night work after 11 o'clock was to be retained for employees under eighteen.<sup>73</sup> Thirteen to sixteen-year olds should be permitted to perform light part-time non-industrial work, in familiar surroundings and for short periods only, allowing them to earn an income of their own.<sup>74</sup> Part of the school vacation, as well as one day a week, should be kept free from work to leave time for other pursuits. Although the Council for Youth Policy approved of the balance achieved between protection and the promotion of social participation in addition to its increased transparency in the Government's second draft Bill, it noted that provisions for equal treatment of employees below and above the age of eighteen were lacking.<sup>75</sup> The third revision of the draft *AtW* was presented to Parliament in session 1993-1994 and approved without any further amendments.

Owing to the abolition of the Council for Youth Policy in 1996, the Department of SZW was dependent on the advice of the Social Economic Council<sup>76</sup> (SER) for the second major Act, the *Arbowet* 1998 (*Working Conditions Act*). Despite the SER's reluctance to endorse the Department's policy of replacing a system itemising activities prohibited to young employees, with one that required the formulation of 'risk inventories'

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<sup>72</sup> Criteria from the 1972 amendment to the *Arbeldsbesluit Jeugdigen* Stb 1972/652 (*Labour Decree Young Workers*), cited in Raad voor het Jeugdbeleid (1990a). *Jong geleerd, oud gedaan? Een advise over de positie van kinderen en jeugdigen in de nieuwe*

<sup>73</sup> *Arbeldstijdenwet*, Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 9.

<sup>74</sup> Raad voor het Jeugdbeleid (1990a). *Jong geleerd oud gedaan? : een advies over de positie van kinderen en jeugdigen in de nieuwe arbeldstijdenwet*, p. 23.

<sup>75</sup> Raad voor het Jeugdbeleid (1990b). *Komt tijd, komt raad: een commentaar op de nota 'Nadere uitwerking van de Jongerenparagraaf uit de Hoofddijnnnota Arbeldstijdenwet'*, Nr 266-85/1546K. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 5.

<sup>76</sup> Board consisting of representatives from employers' and employee organisations.

to identify hazards to particular categories of workers,<sup>77</sup> the legislation was adopted with minor amendments in the Lower House.<sup>78</sup>

*Explanatory Memoranda*

The principal Acts, the *Further Child Labour Regulation (NRK)* 1995 and the *Working Conditions Decree*, contain memoranda explaining the philosophy behind the new legislation, which suggest that the advice from the Council for Youth Policy and the SER has largely been followed. Three categories of young workers are singled out: i) thirteen and fourteen year olds, restricted to light non-industrial work under supervision, ii) young performers and iii) young employees, defined as 'workers under the age of eighteen'.<sup>79</sup> Employers are expected to contribute to the development of young employees by the provision of instruction and training.<sup>80</sup> According to the explanatory memorandum, the legislation satisfied the requirements of the *Minimum Age Convention*, the *European Social Charter* and Council Directive 94/33/EC,<sup>81</sup> providing for protection<sup>82</sup> as well as entitlements,<sup>83</sup> such as vocational training and adequate rest periods for young employees.

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<sup>77</sup> In conformity with s 6, 'General obligations on employers' of Council Directive 94/33/EC and s 7 'planning, implementation and monitoring of the safety and health conditions, applicable to young people' of Directive 89/391/EEC.

<sup>78</sup> Tweede Kamer der Staten-Generaal (1988-1989). *Bijlage Handelingen Tweede Kamer; Bijzondere categorieën werknemers* 7.; 21083; nr. 1. Tweede Kamer. s'Gravenhage, SDU Uitgeverij, § 1 and Tweede Kamer der Staten-Generaal (1993-1994). *Handelingen*, 23-646. s'Gravenhage, §§ 1, 2 and 6.

<sup>79</sup> No distinction is made between the terms 'child' and 'young worker' in the *Working Conditions Decree*, Chapter 1(1)(3), in contrast to the *WIA*.

<sup>80</sup> Provided in Art. 1(8)(7).

<sup>81</sup> Directive 94/33/EC, OJ, L216, cited in the 'royal assent' section of the *WIA*. See also explanatory memorandum to the *NRK*.

<sup>82</sup> 'Against economic exploitation and against any work likely to harm [young people's] safety, health or physical, mental, moral or social development or to jeopardise their education' Art. 1(3).

<sup>83</sup> Such as rest periods for young employees (Art. 10) and provision for instruction and training for risk awareness (Art. 1(8)(7)).

### 7.3. Content of the legislation

#### 7.3.1. The principal Acts<sup>84</sup>

Both California and the Netherlands enacted important child labour legislation during the 1990s. Californian provisions regulating the working activities by minors are spread over various Acts, such as the *Education Code*,<sup>85</sup> the *Penal Code*,<sup>86</sup> *Business and Professions Code*<sup>87</sup> as well as the *Labor Code*. In addition, the provisions of the Federal labour legislation, the *Fair Labor Standards Act (FLSA)* need to be observed.<sup>88</sup> According to comparison tables in a digest of the child labour legislation,<sup>89</sup> Californian child labour provisions are stricter than those of the *FLSA*<sup>90</sup> as well as several other States.<sup>91</sup>

<sup>84</sup> Sources used for California: Westlaw and <http://www.leginfo.ca.gov/>; for the Netherlands: van Drongelen, J. and P. H. Vos *Arbeidstijdenwetgeving*; Paap, K. W. v. R. (1996). *Arbeidsomstandighedenwet*. Zwolle, Tjeenk Willink. and Asscher-Vonk, I. P., Ed. (1999). *Arbeidswetgeving (Arbeidstijdenwet 1995 + updates; Arbeidsomstandighedenwet 1980; Arbeidsomstandighedenwet 1998; Wet minimumloon en minimumvakantiebijslag; Besluit minimumjeugdloonregeling 1983; Wet gelijke behandeling van mannen en vrouwen)*. Deventer, Kluwer, and updates to the *WIA* at: <http://www.overheid.nl>, such as 1999/Stb.-30, the *Arbowet 1998* at <http://www.bondgenoten.fnv.nl/vgwml/>; for Aruba: Lopez, H. T. and A. Werleman (1994). *Labor Law & Labor By-Laws*. (Translator, A. Werleman) Aruba, Stichting Shon Lopez.

<sup>85</sup> E.g. Chapters 2 and 3, §§ 48200-48400, definition of a minor and §§ 48225.5-48225.5 and §§ 48454-48454, provisions for work permits and penalties against parents.

<sup>86</sup> § 273(e)(f), punishment for sending minors to gambling houses or other immoral places.

<sup>87</sup> § 25663, employment of persons under twenty-one in premises used for the sale of alcoholic beverages.

<sup>88</sup> States have the constitutional power to pass child labour provisions, that are stricter than the Federal ones, which means that the stricter standard of the State, where a child is in employment prevails, section 218 of the *Fair Labor Standards Act*, Title 29, Ch. 8 (*FLSA*), 'no provision of this act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this act' also at, 29 C.F.R. ss-570.50(a), 570.129. (1951).

<sup>89</sup> State of California Department of Industrial Relations - Division of Labor Standards Enforcement (2000). *California Child Labor Laws*. [www.dir.ca.gov/DLSE/dlse.html](http://www.dir.ca.gov/DLSE/dlse.html), pp. 56-62.

<sup>90</sup> For instance, children under twelve may not work for their parents in - or accompany a parent or guardian into an 'agricultural danger zone' under the California Labor Code, whilst under the *FLSA* children under twelve may be employed on farms owned or operated by the parent or person standing in place of the parent, except in occupations declared hazardous in federal regulation for minors under 16 in agriculture. There are no child labour provisions applicable to the entertainment industry under the *FLSA*, while the Labor Code restricts this type of employment for children under twelve.

<sup>91</sup> Confirmed on the University of California website: "California has some of the strictest child-labor laws in the nation," December 1999, <http://www.engr.ucdavis.edu/~baa/FarmSafety/Winter99.html>.

Dutch child labour legislation is mainly contained in the *AlW*, Chapter 3, and *Arbowet* 1998. The Acts are drafted as framework statutes leaving room to more specific regulations and decrees, such as the *NRK* and the *Labour Decree Young Workers* 1997. The *NRK* has been amended several times, in relation to work by children of thirteen and fourteen year in their own environment,<sup>92</sup> responsibility by parents and guardians<sup>93</sup> and levels of fines.<sup>94</sup>

Before going into detail, it has to be stressed, that both in the Netherlands and California young people over sixteen have the capacity enter into a contract of labour.<sup>95</sup> In the Netherlands children under sixteen are permitted to enter into such a contract provided the person responsible for the child is asked for consent.<sup>96</sup> If no objections are raised within a four week period, consent is assumed.<sup>97</sup> Whilst Californian young people between fourteen and sixteen are also able to enter into a contract without the consent of parents, if declared emancipated,<sup>98</sup> this course of action is not open to Aruban youths until the age of majority.<sup>99</sup> Aruban child labour provisions are contained in the 1952 Antillian *Arbeidsregeling (WRO)*, whose provisions are basic compared to those of the Californian and Dutch Acts.

### 7.3.2. Aspects of child labour legislation to be examined

Rather than examining the provisions in detail, the intention is to compare a number of features of the various acts, namely:

#### i. Times and hours restrictions (Section 7.3.2.1.)

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<sup>92</sup> On account of protests by the unions of teachers and service personnel, SZW (1996). 'Wijziging nadere regeling kinderarbeid, uitg van Sociale Zaken en Werkgelegenheid.' *Nederlandse Staatscourant* (40), 26 February 1996, p. 8.

<sup>93</sup> SZW 'Wijziging nadere regeling kinderarbeid, uitg. van Sociale Zaken en Werkgelegenheid.', p. 1, recommended by the FNV, FNV Jongerensecretariaat (1998). *Onderzoek naar vakantiewerk en bijbanen van dertien- en veertienjarigen*. Amsterdam, FNV.

<sup>94</sup> College van procureurs-generaal (1997). 'Aanwijzing Arbeidstijdenwet.' *Staatscourant* vol. 42, p. 12.

<sup>95</sup> Art. 7:612:1 BW.

<sup>96</sup> Art. 7:612:3 BW.

<sup>97</sup> Art. 7:612:2 BW.

<sup>98</sup> Family Code (FC) 7000.

<sup>99</sup> Recently lowered from twenty-one to eighteen, see the Comment by the CEACR in Section 5.5.1.3. concerning the lack of legal capacity of young people under twenty-one.

- ii. Particular types of work (Section 7.3.2.2.)
- iii. Responsibility for the welfare of young employees (Section 7.3.2.3.)
- iv. Entitlements (Section 7.3.2.4.)

### 7.3.2.1. Times and hours restrictions

Generally child labour laws have in common, that young workers below the age of sixteen may work part-time up to a certain number of hours per day or per week, and that work may not start before a certain time nor carry on through the night. There may also be requirements for rest periods and further restrictions in connection with the young worker's age. Ages, at which young people can start working, differ from country to country. Generally there are provisions for exemptions, such as work in the entertainment industry or in the context of a programme of study. Criteria for i) rest periods, ii) hours of work and i) lower age limit and number of hours working time permitted are presented in the form of tables to facilitate comparison of this type of legislation across several jurisdictions.

Table 7.1. Rest periods			
	California	Netherlands	Aruba
Day of rest	One day per week. (LC-551, 552) Days of rest may be accumulated over a month (LC-554)	One day per week, Sunday unless a different day is requested on account of religion (ArW.-Art.-5.4, 5.2). Young employees guaranteed an uninterrupted rest period of 36 hours a week (ArW.-Art.-5.3)	One day a week, Sunday unless a different day is requested on account of religion. (WRO.-Art.-8/1); Statutory holidays, e.g. the day after the grand Carnival Parade (WRO.-9/1)
Daily Rest periods	7pm (or 9p.m.) -7am for under 16; 10pm (or 12.30pm-5am) for 16-17	Guaranteed uninterrupted rest period of 12 hours (ArW.-Art.-5.5.-1)	7pm - 7 am (WRO, Art. 17/1)
Rest Periods during the day	10 minutes for every 4 hours of work for adult employees (LC-551, 552) <sup>100</sup> ; ½ hour for meals per 5 hour period (Cal.-Admin.-Code-Blt.-8, s11150. Varying rest periods for young entertainers)	13-15 year olds: ½ hour every 4½ hours (ArW.-Art.-5.10.-1, NRK, Arts. 5:1, 5:2) 16-18 year olds: 3/8 hour every 4½ hours - total 45 minutes per 8 hours (ArW, Arts. 5.10-1, 5.10-3a) <sup>101</sup>	½ hour every 5 hours (WRO.-Art.-8/1)
Vacations	No restriction	13-14 year olds, 15 year olds No more than 3, respectively 4 weeks in succession (Art. 5:1.-2, Art. 5:2.-2)	

<sup>100</sup> No provisions for rest periods are mentioned for workers under sixteen, the entitlement to rest periods only features in the section dealing with young entertainers.

<sup>101</sup> Rest periods for 13-15 year olds are twice the length, and those for 16-18 year olds one and a half times the length of rest periods for adult workers. They are also more frequent.

Table 7.2. Hours of Work per time period for children under sixteen

	California	Netherlands	Aruba
Schooldays:	Work prohibited for under 12 Children 14-16: 3 hours, between 7 a.m. and 7 p.m. (7 a.m.-9 p.m. between June 1 and Labor Day <sup>102</sup> (LC-1391(a)(1)). In permitted occupations (LC-1291-LC-12.94.5);	Work prohibited for under 16 (ArW, Ch. 3, Art.-1:2-1.) Exemptions for light work (Art. 4:2(c)) <sup>103</sup> Children 12-14: 2 hours before 7pm 15 year olds: 2 hours s. between 7 a.m. and 7 p.m. (NRK, Art. 4:1-1.c., 4:2-e.) 12-14 year olds: Up to 7 hours a day, but not over 35 hours a week 15 year-olds: Up to 8 hours a day (NRK, Art.-5:1-1.d. and 5:1-2.)	Work prohibited for under 14 (WRO, Art.-15/1), except in the context of a learning scheme with practical component or for the family where the child is reared (WRO, Art.- 15/2, 16), unless the requirements are too onerous physically or mentally, putting children at risk. Parents/guardians charged with ensuring children are not endangered (WRO-19/1, 19/2)
Non- schooldays:	Children 12-16 Up to 8 hours a day, maximum 48 hours a week (LC-1391(3))		

Table 7.3. Hours of Work per time period for young people 16-18

	California	Netherlands	Aruba
School days:	16-18 year olds: 4 hours between 5 a.m. and 10 p.m. when followed by a school day <sup>104</sup> (EC-49112; 49116; LC-1391); Full-time with a certificate of proficiency (EC 4910 <sup>105</sup> ; LC 1286)	16-18 year olds work up to 9 hours a day, or 45 hours a week (ArW, §4.2, Art. 4.4-2; Work to be organised so as to allow part- time school attendance, counting as work- ing time (ArW §4.2, Arts. 4:4-1, 4:4-2); 9 hours at most, not over 45 hours a week (ArW, Art. 5:8)	14-18 year olds: 7 a.m. to 7 p.m. (WRO-9/1, 9/2) No time-period specified Night work or dangerous work, <u>as will be defined by national resolution</u> , prohibited to adolescents (WRO 17/1) Hawking is prohibited to girls under sixteen <sup>106</sup>
Non-school days:	between 5 a.m. and 12.30 a.m. when the next day is a non-school day (LC-1391), less than 48 hours a week (LC-1391(3))		

## 7.3.2.2. Particular types of work

## Work permitted to children below the age of entry into labour

Although one can examine the regulation of the work of children and young people from a rather mechanical point of view: "a child of such an age is allowed to work for such a period of time," other criteria, depending on specific arrangements are applicable. In California the age of entry into labour, i.e. to engage in full-time work, is officially eighteen.<sup>107</sup> In the Netherlands the age is sixteen<sup>108</sup> and fourteen on Aruba. The

<sup>102</sup> 9th September.

<sup>103</sup> In line with the trend to give children more responsibilities at an early age, see Directive 94/33/EC.

<sup>104</sup> 'In California School attendance cannot be considered work time', as the definition of 'hours worked' is 'the time during which an employee is subject to the control of an employer,' *Industrial Welfare Commission Order*, No 2-2001, 2. *Definitions*. G.

<sup>105</sup> According to EC 48412(a) Any person 16 years of age or older, or who has been enrolled in the 10th grade for one academic year or longer, or who will complete one academic year of enrollment in the 10th grade at the end of the semester during which the next regular examination will be conducted, shall be permitted to have his or her proficiency in basic skills taught in public high schools verified according to criteria established by the State Department of Education. [...] The certificate of proficiency shall be equivalent to a high school diploma. . . . In practice such a certificate represents a badge of failure, e.g. according to respondent CA-F.

<sup>106</sup> *Algemene Politieverordening*, Art. 48; hawking is prohibited to girls only, possibly because of connotations of lewdness.

<sup>107</sup> However, there is a *de facto* age of entry into labour of sixteen, when young people may leave school after passing the California High School Proficiency examination (EC49101, LC 1286).

Californian *Labor Code* contains many exemptions for children under sixteen,<sup>109</sup> whilst Dutch legislation permits thirteen to fifteen year olds to engage in light work, as earning a small competence of one's own is thought to promote self-confidence. The regulations largely conform to the requirements of *Directive 94/33/EC*, which defines light work as activities 'not likely to be harmful to the safety, health or development of children [ . . . ] nor to their attendance at school'.<sup>110</sup> However, provisions to regulate sports have been omitted, despite the obligation to harmonise its child labour provisions with *Directive 94/33/EC*.<sup>111</sup>

As the only exception in Aruba's *WRO* concerns work performed in connection with vocational training permitted to young people from twelve and above, provided they have passed the sixth form of primary school,<sup>112</sup> Aruba has not been included in the sections below.

#### *California*

Certain types of part-time work are open to fourteen and fifteen year olds despite the official age of entry into labour of eighteen in California, which *de facto* comes to sixteen, because students may legally leave school without a High School diploma once they reach their sixteenth birthday.<sup>113</sup> A number of activities permitted to fourteen and fifteen-year olds can be found in §1294.3 of the *Labor Code*, for instance; bagging groceries, office work, cashiering, selling, modelling and kitchen work. Children under twelve may not be economically active, except for participation in theatrical performances or casual work in private homes such as babysitting and household work

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<sup>109</sup> Art. 1(2), *WIA*. However, the CEACR appears to be under the impression that the age of entry into labour is still fifteen in the Netherlands, see Section 5.5.1.2., the Netherlands, see also footnotes 9-10, this Chapter, relating to substitute-education for fourteen-year olds, and 'partial education', applicable to sixteen to seventeen year olds.

<sup>109</sup> E.g. for the prohibition of cooking and baking, except at soda fountains [ . . . ] cafeteria serving counters, 29 CFR § 570.34, regulation 5.

<sup>110</sup> Art. 3(d)(i) and (ii), see also see also World Health Organisation (1987). *Children at work: special health risks: report of WHO Study Group. (Technical report series no.756)*. Geneva, World Health Organisation, p. 36.

<sup>111</sup> See Chapter 5, footnote 209.

<sup>112</sup> *WRO* 1/16.

<sup>113</sup> See footnote 107, this Chapter, also Chapter 2, Section 2.3.1.1., footnote 41.

for parents. However, some types of work, permitted to so-called 'self-employed minors' under Federal legislation, may be performed by children younger than twelve, who are exempt from requirements for work permits. Under restrictions applicable in California such activities are in accordance with State legislation not allowed to young people under sixteen except under certain specified conditions. An example is door-to-door selling of sweets, presented as a charitable activity. Although only permitted if children work in pairs, as a team, on the same or opposite side of the street, and only if supervised by an adult, who may not take the children further than 50 miles from their home,<sup>114</sup> such work is open to abuse. First of all, the legislation is complicated, while children of such a low age surely should not be taken away from their homes by crew leaders, who may well be strangers acting out of profit.

#### Entertainment

Work in performances by children and young people is of major importance in California as the home of the U.S. film industry. The Act provides that work for the entertainment industry may only involve activities, which are not hazardous or detrimental to the health, safety, morals<sup>115</sup> or education of minors.<sup>116</sup> In addition, the Act contains provisions concerned with the permits for the employment of under-age children, appropriate working hours for different age groups<sup>117</sup> and excused absences from school.<sup>118</sup> The need for the presence of studio teachers and parents/guardians on the set in order to ensure, that a young performer is not left on her own is also stressed.<sup>119</sup> As children may be employed from the age of 15 days onward, the amount of time children are allowed to spend on the set, varies from two hours for infants to nine in the case of teenagers.<sup>120</sup>

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<sup>114</sup> LC 1296, 8 CCR 11706.

<sup>115</sup> 'Detrimental to morals means obscene or sexually depraved', Penal Code, §§ 311-314.

<sup>116</sup> 8 CCR 11751(b), see Glossary.

<sup>117</sup> Between 5 a.m. and 10 p.m., lengths of time according to age (LC-1308.7(a) 1392.

<sup>118</sup> EC 48225.5.

<sup>119</sup> 8 CCR 11757 and 11757.1.

<sup>120</sup> 8 CCR 11760.



*Other activities permitted to twelve year olds*

Other activities, such as door-to-door selling, permitted to children over twelve for the benefit of schools or charities,<sup>121</sup> and agriculture have been the subject of severe criticism. Traditionally agricultural work was considered a healthy and wholesome activity beneficial for young people. According to the *Fair Labor Standards Act (FLSA)*<sup>122</sup> and several State laws, picking fruit and vegetables is legal for children from ten upward without parental supervision. In California the lower age for agricultural tasks has been raised to twelve. As modern farming methods can pose great danger for inexperienced workers,<sup>123</sup> children under twelve are no longer allowed to help their parents in farm work, if an acknowledged source of danger exists.<sup>124</sup> Other jobs open to twelve year olds are those of 'independent newscarrrier',<sup>125</sup> personal attendant or home-helper, types of work which may take place on non-school days only.<sup>126</sup> No further details are given concerning the number of hours children can legitimately spend working.

*Netherlands*

The nature of non-industrial light work, permitted to thirteen and fourteen year olds for up to twelve hours a week,<sup>127</sup> is explained in the *NRK* by a number of examples, such as baby-sitting for friends or relations, washing cars, housework or helping a responsible adult with the distribution of leaflets. Types of work permitted to children under sixteen in the Netherlands, that deserve some comment are i) taking part in performances of various kinds, ii) alternative punishments and iii) newspaper delivery.

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<sup>121</sup> LC-1308.1.

<sup>122</sup> § 213(c)(4).

<sup>123</sup> Cogbill, T. H., H. M. Busch, *et al.* (1988). 'Farm Accidents in Children.' pp. 562-566.

<sup>124</sup> LC-1293.1.

<sup>125</sup> LC-1298, EC-49112(d). Young people delivering newspapers or magazines are presumed to conclude an independent agreement with publishers and are then designated 'little merchants', which means they are engaged in 'an independent contractual relationship in which newspapers purchased at wholesale rates are resold to subscribers to produce a profit'. Linder, M. (1990). 'From Street Urchins to Little Merchants: The Juridical Transvaluation of Child Newspaper Carriers.' *Temple Law Review*, Winter, 1990, pp. 829 - 864.

<sup>126</sup> LC 1294.4.

<sup>127</sup> NRK Art. 4:1.-1.e. and -2.b.

### Entertainment

A separate code of regulations, the *Policy Decree Exemption Prohibition Child Labour (BOVK)*,<sup>128</sup> authorised under *AtW Art. 3:3*, permits children under thirteen to participate in cultural or artistic performances, fashion shows, etc. The decree makes a distinction between children of under and over seven years. As children of the lower age group are not allowed not to become the focus of the audience's interest, the work should contain an element of play.<sup>129</sup> An exemption may be granted once only, for one production during this period of a child's life.<sup>130</sup> Work may not take more than two hours a day during term time, or four on a holiday, whilst an uninterrupted rest period of at least fourteen hours must be guaranteed.<sup>131</sup> Exemptions to the 'once in seven year' rule are permitted only to children of exceptional talent.<sup>132</sup> Children between seven and thirteen may take part in a performance twelve times a year at the very most and no more than twelve hours a week,<sup>133</sup> whilst their contribution should be restricted to minor roles, such as a walk-on part, a song or an interview.<sup>134</sup> The Explanatory Memorandum emphasises the importance of developmental issues, explaining that performances and exemption should be guided by a concern for a child's welfare and fit in with her lifeworld.

### Alternative punishments

Since a 1983 experiment in containing youth crime, whereby young shoplifters were sentenced to make amends to shop owners in the form of work, the activities of the HALT Office, which regulates alternative youth punishment, have grown exponentially.<sup>135</sup>

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<sup>128</sup> AV/RV/952549, Stcrt. 1995, 246.

<sup>129</sup> BOVK, rule 1a. A few child vocalists managed to circumvent the BOVK and become celebrities, such as Jantje Smit (<http://surf.to/jantjesmit>), mentioned by three interview respondents to illustrate an unhealthy state of affairs. Two twelve year olds achieved a short-lived celebrity, sharing a title role in the Rotterdam youth theatre, 'Ze klappen voor mij', *NRC-Handelsblad, Web- en Weekeditie voor het Buitenland*, 07/01/2003, p. 28.

<sup>130</sup> Rule 2.-1.

<sup>131</sup> Rules 2.-1b. and c.

<sup>132</sup> Rule-2.2.

<sup>133</sup> Rules 3-2.a, b and 3-1.

<sup>134</sup> Rule-1b.

<sup>135</sup> Kruissink, M. (1991). 'Zakken vullen, wordt vakken vullen; jeugdige winkeldieven naar Bureau Halt.' *Algemeen Politieblad van het Koninkrijk der Nederlanden* vol. 140(18), 14 september 1991, pp. 8-11; Brees, L. W. and M. Brouwers (1996). *Taakstraffen voor minderjarigen; toepassing en uitvoering opnieuw belicht*. Arnhem, Gouda Quint.

'Task punishments', codified in the 1995 Amendment to the Criminal Code,<sup>136</sup> have been incorporated in the regular child labour legislation. Children of twelve and above are set tasks as part of an alternative punishment for up to two hours on a schoolday and up to seven hours on a non-schoolday or twenty hours a week during term time, rising to seven hours a day or thirty-five hours a week during the school holidays.<sup>137</sup>

#### Newspaper delivery

As newspaper delivery was found to be too demanding to be rated as 'light work', it is not permitted to thirteen and fourteen year olds.<sup>138</sup> However, fifteen year olds are allowed to deliver morning newspapers, conditional on a contract signed by the child's parents, the employer and the young person herself.<sup>139</sup>

#### *Legislation concerned with adolescents - 16 and 17-year olds*

#### Driving for reasons of work

In addition to occupations prohibited for young people because of health risks, certain activities are considered inappropriate for this age group, such as driving in the context of work. Until 1998, when federal regulations were relaxed, young people in the States, including California, were allowed to drive occasionally for reasons of work only. When the amendment was under discussion, organisations such as the National Institute for Occupational Safety and Health (NIOSH) warned about the risks, as car accidents form one of the major causes of death and serious injury for young people.<sup>140</sup> Driving for reasons of work does not apply in the Netherlands, as under eighteens may not hold a driving licence.

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<sup>136</sup> Art. 77e to 77h.

<sup>137</sup> NRK, Art. 2:1.-1, 2:1-2b. and 2:1-3.

<sup>138</sup> Children complained of having to get up too early and lift heavy bundles of newspapers, van Beckhoven, A. P. M. (1991a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*, quoted in the explanatory memorandum to Art. 9:1 of the NRK.

<sup>139</sup> Explanatory memorandum to Art. 9:1. of the NRK.

<sup>140</sup> NIOSH Child Labor Working Team (1997). *Special hazard review, Child labor research needs : recommendations from the NIOSH Child Labor Working Team*. Atlanta, Ga, U.S. Dept. of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, pp. 7-10.

### Sex work

Many people close their eyes to the fact that children and teenagers may engage in prostitution, an activity considered 'work', by authors such as Bindman,<sup>141</sup> and straight exploitation according to the ILO *Worst Forms of Labour Convention*. Few people have any doubts that prostitution, involving young children under the age of consent, defined as '... the use of a child in sexual activities for remuneration or any other form of consideration',<sup>142</sup> constitutes exploitation.

However, the involvement of young people of sixteen and seventeen is more ambiguous. Although categorised as 'child labour',<sup>143</sup> in the ILO *Worst Forms of Child Labour Convention* 1999, the designation gives rise to unease. Young people in this age group, who are over the age of consent, can no longer be treated as children lacking all autonomy. According to the campaign manager of Ecpat-NL, sixteen and seventeen year olds, who come across as adults but lack the defences an older and more experienced individual would have, are those most likely to attract the attention of individuals looking for sexual services.<sup>144</sup> If 'sex work' is legitimised as in the Netherlands, it can be declared open to people over a certain age only, while criminalising clients, pimps and procurers of younger individuals. The approach favoured by the framers of the Optional Protocol on the Sale of Children, which constructs juvenile prostitutes as victims,<sup>145</sup> on the other hand, may well be experienced as high-handed and intrusive.

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<sup>141</sup> Bindman, J. (1997). *Redefining prostitution as sex work on the international agenda*. London, Anti-Slavery International.

<sup>142</sup> CRC, *Optional Protocol on the Sale of Children*, Art. 2(b).

<sup>143</sup> Art. 3, 'For the purposes of this Convention, the term the worst forms of child labour comprises (a) [...], (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances', together with Art. 2, 'For the purposes of this Convention, the term child shall apply to all persons under the age of 18.'

<sup>144</sup> Telephone conversation, 06/05/2003.

<sup>145</sup> The proposal to refer to these young people as 'children used in the practices condemned in the present Protocol' rather than 'victims' as less disparaging of their dignity, was rejected by the Working Group, see Chapter 4, footnote 181.

California

Prostitution

Juvenile prostitution was not identified as a problem until the 1970s, despite the fact, that it had been a common occurrence in California since the mid 1960s.<sup>146</sup> The Californian Penal Code remains ambiguous, despite the enactment of the 1978 Federal *Protection of Children Against Sexual Exploitation Act*.<sup>147</sup> Sections 266 and 309 treat the young prostitute as a victim, referring respectively to 'Inveiglement or enticement of unmarried female under eighteen for purposes of prostitution' and 'proprietor [. . .] of a house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein'. When juvenile prostitution takes place under these circumstances, responsibility lies on the shoulders of adults. It is, however, 'unlawful for any person to loiter in any public place with the intent to commit prostitution',<sup>148</sup> which suggests that anyone, including teenagers, runs the risk of being charged with soliciting.<sup>149</sup>

Netherlands

Prostitution

The early 1990s saw several studies on male juvenile prostitution in the Netherlands. Like the boy prostitutes depicted by Weisberg,<sup>150</sup> several of the young people interviewed took pride in their professional attitude. Rather than regarding themselves as victims, they claimed to offer a service by looking after their clients' needs.<sup>151</sup> However, the chaotic and abusive family history of many of these young people has clearly been a contributory factor to their choice of lifestyle.<sup>152</sup> In many cases

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<sup>146</sup> Weisberg, D. K. (1985). *Children of the Night: a study of adolescent prostitution*. Lexington, Lexington Books.

<sup>147</sup> United States Codes (U.S.C.) §§ 2251, 2253, 2225.

<sup>148</sup> Section 653.22.

<sup>149</sup> Also the case in the U.K., *Street Offences Act*, 1959.

<sup>150</sup> Weisberg, D. K. (1985). *Children of the Night: a study of adolescent prostitution*, p. 28.

<sup>151</sup> van der Poel, S. (1991). *In de bisnis: professionele jongensprostitutie in Amsterdam*. Amhem, Gouda Quint, p. 111; van der Poel, S. (1992). 'In de bisnis: jongensprostitutie als commerciele dienstverlening.' *TS Jeugdonderzoek*, vol. 5(2), juli / aug. pp. 2-8.

<sup>152</sup> Many of van der Poel's respondents had been thrown out their homes by parents, or were drug-dependent. Poel, S. v. d. (1991). *In de bisnis: professionele jongensprostitutie in Amsterdam (proefschrift Utrecht)*. Amhem, Gouda Quint.

sexual abuse constitutes an important element in the motivation of both girl and boy prostitutes.<sup>153</sup> In recent years, there have been far-reaching changes in the Netherlands, as prostitution was legalised, turning it into an employment like any other.<sup>154</sup> Until the 1999 amendments the Criminal Code contained a complaint requirement in cases of prostitution of children between twelve and sixteen, before prosecution could take place. Profiting from the prostitution of a minor under sixteen, irrespective of intercourse being consensual, is punishable by up to eight years in prison, whilst sanctions are lower in the case of young people over sixteen.<sup>155</sup>

#### Aruba

The present Criminal Code, dating from 1991,<sup>156</sup> construes prostitution as a nuisance rather than a criminal offence.<sup>157</sup> Prostitutes are targeted as well as procurers<sup>158</sup> and traffickers<sup>159</sup>. As in the other two jurisdictions sexual relations with individuals under the age of sixteen are prohibited.<sup>160</sup> The *Wetboek van Strafrecht* (Criminal Code) has recently been amended to reflect present-day thinking about sexual offences. Until 15 August 2003 the prohibition concerned 'inducing sexual acts with a minor of previously good character',<sup>161</sup> whilst 'intimate relations with minors of the same

<sup>153</sup> The Department of Justice also blames drugs dependency and the seduction of Moroccan girls by 'loverboys', [http://www.minjust.nl/b\\_organ/naps/nieuws/sec\\_liefde\\_te\\_koop.htm](http://www.minjust.nl/b_organ/naps/nieuws/sec_liefde_te_koop.htm), also Calceos-Santos, O. (2000). *Report on the mission of the Special Rapporteur to Belgium and the Netherlands on the issue of commercial sexual exploitation of children* (30 November-4 December 1998), E/CN.4/2000/73/Add.1. Geneva, UN, Economic and Social Council, §121.

<sup>154</sup> 1999/Stb. 484. Organised prostitution is brought under the health and safety provisions of the *Arbowet*. If no professional relationship between employer and employee exists, as in the case of free-lancers, the *Arbowet* does not apply. (*Arbowet*, Art 1.-1 and 2). Letter from the Minister of Justice, nr 19, Lower House debate 25-437.

<sup>155</sup> Stb. 1999/484, Criminal Code, Art.-250a. 1 and 250a. 2

<sup>156</sup> *Wetboek van Strafrecht van Aruba* (1991). Title XIV, *Misdrijven tegen de Zeden*, AB 1991 no GT.50.

<sup>157</sup> *Algemene Politieverordening* (1995). AB 1995, no GT 8 (General Police Regulation), Art. 49, adopted in 1952, see Chapter 6, footnote 117.

<sup>158</sup> Criminal Code, Art. 259.

<sup>159</sup> Criminal Code, Arts. 259, 'pimping', 260, 'trafficking of women and minors of the male sex'.

<sup>160</sup> Criminal Code, Arts. 250, 'caral knowledge of a girl under twelve', 251, 'caral knowledge of a girl between twelve and sixteen', 256(2): 'Prosecution takes place on the basis of a complaint only'.

<sup>161</sup> Art. 256(1), 'he, who by means of gifts or promises, induces a minor of previously good character to perform lascivious acts, is liable to imprisonment for up to four years'.

sex' were also punishable.<sup>162</sup> Therefore sexual intercourse with a fifteen year old girl was until recently no offence, with the implication that girls over fifteen, who were not regarded as 'of previously good character',<sup>163</sup> such as immigrant girls involved in prostitution, were not protected by the Aruban law.

### **7.3.2.3. Responsibility for the welfare of young employees**

Issues of rights and responsibilities play an important role in the employment of young people under eighteen. An important question is who should be held responsible for violations of child labour and/or youth employment provisions, whether parents or guardians of the young person, employers and/or the State itself, and under what circumstances. Comparison of the respective 'State' provisions regulating the responsibilities of these various categories of adults involved in the employment of young people helps to decide which regulations are the more effective in persuading employers as well as both part-time and full-time young workers to keep to the law. The following section covers who is charged with the legal responsibility for the well-being of under-age employees and the liability for their actions.

#### *California*

Work permits<sup>164</sup> issued by the young person's schoolteachers are obligatory for all commercial employment of children<sup>165</sup> including by parents or guardians, who are held liable for infringements of the provisions by permitting underage workers to engage in activities declared hazardous.<sup>166</sup> However, agricultural or domestic work on the property of parents is exempt, provided it takes place out of school hours,<sup>167</sup> with the proviso, that

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<sup>162</sup> *Wetboek van Strafrecht*, Art. 255.

<sup>163</sup> *Wetboek van Strafrecht*, Art. 256(1), 'he, who by means of gifts or promises, induces a minor of previously good character to perform lascivious acts, is liable to imprisonment for up to four years'. (deleted in 2003 amendment *Landsverordening tot wijziging van het Wetboek van Strafrecht van Aruba* (AB 1991 no GT50) (aanpassing zedendelicten en strafbaarstelling belaging).

<sup>164</sup> 'A permit to Employ and Work' (BI-4), issued at the School's discretion. (EC49110-EC49114 and EC49130).

<sup>165</sup> Excepting young people, who have left school with a certificate of proficiency, and who therefore do not need a work permit, see footnote 106, this Chapter.

<sup>166</sup> LC-1308.

<sup>167</sup> EC-49141; LC-1394a, c.

children under twelve may not accompany parents or guardians 'into an agricultural zone of danger',<sup>168</sup> or be employed in any of the occupations declared hazardous whilst under their supervision.<sup>169</sup> Both form teachers as well as employers are presumed to be involved in record keeping, the former charged with registering requests for work permits,<sup>170</sup> the latter with recording personal details of employed minors as well as payroll data.<sup>171</sup> In practice, these tasks are often neglected.<sup>172</sup>

*Netherlands*

Art.-1:2.-2 of the *AtW* defines 'child work' as 'activities performed by a child in honour of an agreement'. Therefore parents who employ their own children are subject to the same regulations as other employers. Both the employer and the person exercising parental responsibility over a child, are designated 'responsible persons',<sup>173</sup> charged with ensuring that he or she only engages in permitted occupations, including tasks in connection with alternative punishments, educational schemes or light non-industrial work. Employers need to appraise and evaluate all risks to employees in their organisations, including additional dangers to young employees owing to their immaturity.<sup>174</sup> They are additionally obliged to inform parents or guardians of the nature of a child's work and the measures taken to minimise potential risk.<sup>175</sup> The identification of risks to young employees forms part of the general obligation of employers of drafting an 'inventory and evaluation of risks' (*Ri&E*) relating to all employees, which needs to be kept available for inspection. The *Ri&E* obligation entails identification of ergonomic aspects, a record of measures to prevent sexual intimidation and violence<sup>176</sup> and

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<sup>168</sup> LC-1293.1a.

<sup>169</sup> According to either the Code of Federal Regulations, 29-CFR-570.71, or the Code of California Regulations, 8 CCR 11707.

<sup>170</sup> LC 1299, EC 49161, 49164, 49181.

<sup>171</sup> LC 1174, 1175.

<sup>172</sup> The most common infringement is 'lack of a valid permit', see Table 7.5: Resources used for child labour inspections, 2001.

<sup>173</sup> *NRK*, Art. 3:1.a. and b.

<sup>174</sup> *AtW*, Art. 4.1.-1.

<sup>175</sup> *AtW*, Art. 3:4.

<sup>176</sup> *Arbowet*, II:1. Art. 3a. and 3b.



briefings to young people to help them avoid risks.<sup>177</sup> Certain tasks may be performed under supervision only. A copy of the *RI&E* document has to be presented to each employee, to the appropriate Works Council and, in the case of young employees, to parents or guardians.<sup>178</sup> The *RI&E* record is complemented by a yearly programme for risk avoidance, drawn up in consultation with the appropriate Works Council.<sup>179</sup>

In addition, a business has to appoint one or more mentors charged with the day-to-day responsibility for young employees, such as warning of potential risks, advising on safety precautions and familiarising them with the company's culture.<sup>180</sup> These mentors also need to maintain contact with educational establishments, if young employees still follow some form of formal instruction.<sup>181</sup> In the Netherlands record keeping rests solely on the employer,<sup>182</sup> one of whose tasks is to request exemptions for under-sixteens from the Department of Social Affairs.<sup>183</sup>

#### Aruba

No further provisions aimed at minimising risk to young employees have been enacted in Aruba since the 1954 Ordinance, despite the 'State's obligation to identify activities posing a risk to the welfare of young and inexperienced workers, as stipulated in the ILO *Minimum Age Convention*. Unlike Californian or other countries, which periodically publish lists of hazardous activities prohibited to young employees, Aruba has not identified any activities posing a risk to teenage workers. Otherwise child labour provisions apply to any type of 'employment' including all activities performed outside an enterprise, except work in or for a child's family.<sup>184</sup> Parents, guardians and heads of families, must ensure that children under their parental authority or guardianship do not perform work prohibited by the 1952 *Ordinance*. With regard to responsibility for other

<sup>177</sup> *Arbowet*, II:1 Art. 1a. - 1f. and *Arbobesluit* 1, section-8, Art. 1.36.

<sup>178</sup> *Arbowet*, II:3, Art. 4:8.

<sup>179</sup> *Arbowet* I:4, art. 7.

<sup>180</sup> *Arbobesluit*, II:7, Art. 7.

<sup>181</sup> *Arbobesluit*, II:8, Art. 1.36 and 1.37.

<sup>182</sup> *AtW*, Art. 4:3, 1.

<sup>183</sup> *AtW*, Art. 3:3.-1. and -2.

<sup>184</sup> *WRO*, 15/2.

workers, young people between fourteen and eighteen are not permitted to operate hoisting equipment, which might endanger other employees.<sup>185</sup>

#### 7.3.2.4. Entitlements

In accordance with labour standards, accepted in the affluent part of the world, adult workers have won the right to a range of entitlements, such as a minimum wage and paid holidays. Although several International Instruments,<sup>186</sup> such as, the *ICESCR* and the *European Social Charter* 1961 grant such rights to all workers, whilst the non-binding *ILO Minimum Age Recommendation* 1973 emphasises the entitlement of children and young people to a minimum wage, such rights are not accepted universally for young workers.

#### California

Both the California and the federal legislation contain provisions concerning wage levels: young people of all ages are entitled to a minimum wage, whether working part-time or full-time,<sup>187</sup> whilst sixteen and seventeen year olds, permitted to work 48 hours a week, when working full-time, are entitled to any applicable overtime pay.<sup>188</sup> The minimum wage applicable to young workers under the age of eighteen must be at least 85 percent of the adult minimum wage.<sup>189</sup> Until the passing of SB-1162<sup>190</sup> in 1999

<sup>185</sup> *Veiligheidsverordening (Safety Ordinance)* 1991 GT 22 'A person below the age of 18 may not operate hoists, including scaffolding apparatus, or give signals to the person operating such apparatus.' (Art. 27(10), see Chapter 5, footnote 293.

<sup>186</sup> E.g. in connection with minimum wage and paid holiday entitlements, *ICESCR*, Art. 7, 'Just and favourable conditions of work, Art. 7(a)(i) 'Fair wage and equal remuneration for work of equal value'; Art. 7(d), 'rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays'. *European Social Charter*, Art. 7(5), 'to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances', 'Art. 2(2), 'to provide for public holidays with pay', and the *ILO Minimum Age Recommendation* 1973, concerned with the 'protection and advancement of children and young persons' (Preamble), Art. 13(1)(a), the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work' and 13(1)(d), 'the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults'.

<sup>187</sup> Minors may not be paid less than 85% of the adult minimum wage. LC-1197 and California Industrial Welfare Commission order 4, <http://www.dir.ca.gov/IWC/iwc.html>. Employers are additionally allowed to pay a 'youth opportunity wage', applicable to workers under 20 years of age during the first 90 consecutive calendar days after the employee is initially hired. (29 USC 206(g).

<sup>188</sup> IWC (Industrial Welfare Commission) Orders Section-3.

<sup>189</sup> IWC (Industrial Welfare Commission) Orders Section-4.

parents could dispose of up to seventy-five percent of a child's earnings. Businesses are obliged by law to carry Workers' Compensation insurance, which is applicable to all employees, including workers under the age of eighteen<sup>191</sup>. As regards entitlements to work training, California legislation does not provide for any education for young people prior to the commencement of their employment.<sup>192</sup>

#### Netherlands

A minimum youth wage applies to young employees between fifteen and twenty-three in accordance with the *Minimumjeugdloonregeling*,<sup>193</sup> as persons below that age are assumed to lack professional competence. In consequence the youth minimum wage did not apply to thirteen and fourteen year olds, until the decision in *Case AF1787*, 11/12/2002, Civil Court, s'Gravenhage,<sup>194</sup> despite a provision in the *NRK* 1995<sup>195</sup> permitting them, like fifteen year olds, to engage in light non-industrial work. Young workers are, like everyone else, entitled to holiday pay of eight percent of earnings during the period before the vacation.<sup>196</sup> Deduction for insurance and taxation applies. Children working for their parents have the same rights as other young employees.<sup>197</sup>

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<sup>190</sup> Updating the 1939 'Coogan Law' protecting child actors.  
<sup>191</sup> LC 3700.

<sup>192</sup> 'Currently, no state provides labor education for minors prior to entry into employment'.  
Source: <http://www.stopchildlabor.org/USchildlabor/modelstateaw.htm>, 10/12/2000  
<sup>193</sup> 1983/Stb. 300, translated as 'Minimum Youth Wage Regulation'.

<sup>194</sup> *Case AF1787*, 11 December, 2002, Civil Court, s'Gravenhage. 'The Hague Civil Court has upheld the claim by the CNV Youth Section and the Trade Union Federation FNV, to establish a minimum wage for thirteen and fourteen year olds. The Court declared that the earlier refusal by the State to establish a minimum wage for young people in the age categories of thirteen and fourteen was contrary to *ICCPR*, Art. 28 in conjunction with Art. 7 of the *European Social Charter*. The Court has ordered the State of the Netherlands to establish a minimum wage for these age categories within a period of eighteen months. An appeal has been lodged against the decision', <http://www.jocnv.nl/>; for *ICCPR*, Art. 28, see Chapter 5, footnote 39, for Art. 7, *European Social Charter*, see Appendix 5.

<sup>195</sup> *NRK*, Arts. 10:1, 11:1, 1995/Stb. 246, amended 1998/Stb. 40

<sup>196</sup> Despite the decision in *case AF1787* no minimum wage for thirteen and fourteen-year olds has been established by the 27<sup>th</sup> of July 2004. Young people in that age group have been advised by the FNV and CNV that the minimum wage for fifteen year olds is applicable.

<sup>197</sup> 'Children working for parents, may have entered into a contract of labour with them'. That might be the case, if labour conditions could be regarded as satisfactory by other employees. A child can also enter into an agreement with a legal person, such as a private limited liability company owned by her parents' (<http://www.arbeidsrechter.nl>), see Art. 2: Art. 175 and *Arst.* 7: 610, 7: 612.

**Aruba**

Minimum wages are payable to full-time employees, provided over a third of a week is spent in work.<sup>198</sup> Provision of minimum wages is not applicable to service relationships.<sup>199</sup> Despite the entitlement to a minimum wage for workers employed full time, the Teachers' Union of Aruba requested the ILO to urge the Government to establish a youth minimum wage, in order to prevent exploitation of fourteen to eighteen-year olds by employers.<sup>200</sup>

**7.3.2.5. Assessing content of the respective legislations**

Comparing types of work according to age offers a number of striking differences. In addition to work for the entertainment industry, children younger than twelve, may engage in part-time work for up to eight hours a day in California, but on non-school days only, doing unregulated types of work, such as baby-sitting, lawn-mowing or domestic labour, and must be paid the wage rates established by the Industrial Welfare Commission. Although difficult to enforce, children of that age are not allowed to do any kind of work in the Netherlands, apart from participation in theatrical productions on an occasional basis. Whilst Dutch children under twelve are likely to engage in some domestic work for short periods despite the official prohibition, most parents will shy away from burdening such young children with the care of infants.<sup>201</sup> Like their younger colleagues, twelve to fourteen year olds, may work for eight hours on non-school days only in similar occupations. Additionally they are allowed to engage in agricultural work and to deliver newspapers, in a capacity of 'self-employed' workers. In the Netherlands newspaper delivery is regarded as falling outside the category of 'permitted light work', but may be done by fifteen-year olds. In contrast no Aruban child under fourteen is permitted to work at all.

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<sup>198</sup> Art. 3:3b. of the *Minimum Wage Ordinance*, PB 1972/110.

<sup>199</sup> *Minimum Loon Regeling (Minimum Wage Ordinance)*, PB 1972/110, Art. 3.

<sup>200</sup> Submissions, CEACR (1999-2002). *Comments made by the Committee of Experts on the Application of Conventions and Recommendations, to reports to the Minimum Age Convention 1973 (Aruba)*. Geneva.  
<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

Older children under sixteen are allowed to engage in part-time work on schooldays for up to three hours in California, i.e. an hour longer than young people in that age group in the Netherlands, possibly in connection with the shorter school hours. There are a number of occupations which are permitted in California, such as working at a cash-register, door-to-door sales under supervision, but not in the Netherlands.

The Californian list of occupations prohibited to sixteen to eighteen-year olds is extensive, but needs more frequent updating. The Dutch approach requires more in the way of a responsible attitude both from the employer and the young employee herself. Young people are allowed to engage in work involving a certain measure of risk, provided this takes place under supervision, and are gradually introduced to more responsible and possibly more dangerous tasks. To that end, communication between the responsible parties, parents as well as teachers and employers is considered essential. Such an approach is more logical, but requires a considerable degree of co-ordination between the involved parties.

*Issues of responsibility*

Both in California and the Netherlands parents or guardians employing their own children are held responsible like other employers. The Californian exemption for labour permits and regulations in the case of agricultural and domestic work for parents seems contradictory. On the one hand, children are exempt from limitations such as hazardous occupation restrictions, on the other, their parents are charged with ensuring that young employees do not engage in work proscribed by the Code of Federal Regulations.

In practice, the requirement for 'Permits to Work and Employ', for which numerous exemptions apply,<sup>201</sup> and which are supposedly issued by a young person's school for approval for part-time work, is widely ignored. It not only depends on the prospective employer, but also on teachers and parents as well as the prospective young worker

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<sup>201</sup> Compare, e.g. the reactions of a number of Dutch respondents, See Chapter 8, footnote 54.  
<sup>202</sup> Such as sixteen year olds with a certificate of proficiency, expelled students, self-employed workers, e.g. newspaper deliverers.

herself, to whom the requirement to apply for a permit is likely to seem just another layer of bureaucracy keeping her from her future earnings. As employers, and possibly parents, are the only involved parties subject to sanctions, the young person herself is unlikely to regard possession of a work permit of much use. Unless the prospective young employee is given to understand, that there are benefits to be gained from registering,<sup>203</sup> she has little incentive to do so. In addition, the fact that two distinct individuals are charged with record keeping, gives rise to duplication if both perform their tasks diligently, but may also cause either to neglect his or her task in the belief that it is already being done elsewhere. Also, records may be out of step. It seems much more logical to hold one individual, the employer, responsible for the maintenance of records, applicable both to part-time child and adult employees, and registered centrally as in the Netherlands. An employer should have sufficient knowledge of current labour provisions, whilst he or she can be held to account in case of violations. In any case an employer's records will be more complete than those kept by teachers, who are involved indirectly.

#### *Entitlements*

Young people from age fifteen upward are entitled to a 'youth wage' rising by yearly increments to the full minimum wage, which is payable at age twenty-three.<sup>204</sup> Despite the low remuneration due to underage workers, a number of entitlements go some way to compensate. Young people can in many cases claim holiday allowances,<sup>205</sup> and are also entitled to receive tuition to assist in their development as participants in the world of work. Nevertheless Californian young people appear to be better off with a wage

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<sup>203</sup> The disadvantages of working unregistered, e.g. lack of insurance as well as the benefits of concluding a work contract, such as holiday entitlements are pointed out to prospective young workers in the Netherlands by the FNV, <http://home.fnv.nl/bijbaan/content/rechten.html>.

<sup>204</sup> On 1 July 2004, the minimum wage for fifteen year olds amounted to 30% of the minimum wage of employees aged twenty-three, entitled to the minimum wage. Eighteen year olds are entitled to 45.5% of the minimum wage. No minimum youth wage has as yet been established for thirteen and fourteen year olds, despite the decision of Case AF1787.

<sup>205</sup> Employees who have reached age 15, but are under 23, are entitled, as indicated in Art. 7(1) *Wet Minimumloon en Minimumvakantiebijslag 1966*, Stb. 1968/657 (*Minimum Wage and Minimum Holiday Allowance Act*) Art. 1, *Besluit Minimum Jeugdloonregeling 1983* (*Minimum Youth Wages Act*).

of no less than 85 percent of the minimum wage. Aruban youths are subject to arrangements which give them little in the way of autonomy, whilst minimum wage levels do not apply to occasional work or activities performed in the context of service arrangements. Although young people are in many cases entitled to a minimum wage, they may not have been informed of their entitlement. In order that young employees receive their due, accurate information as well as effective enforcement of provisions is essential.

#### 7.4. Implementation of response mechanisms

##### 7.4.1. Publicity and enforcement

Where regulations tended to be disregarded in the past, effective publicity and enforcement are essential, if new legislation is to be more than symbolic. The table on the next page shows the implementation measures taken by each government. Clearly inspectorates have discretion to interpret legal provisions as they see fit in order to clarify any ambiguities. In addition, the procedure manuals created by the inspection divisions reflect the need to achieve procedures the divisions regard as workable and fair. For instance, in the Netherlands parents/guardians of children under thirteen, found employed illegally, receive a citation for neglecting their responsibilities. However, the level of fines is lower for parents than for employers. In California no fines have been levied from parents, despite provisions authorising sanctions to parents/guardians in the *Labor Code*.<sup>208</sup>

##### 7.4.1.1. Comparison of enforcement resources for the year 2001

Table 7.4. Resources used for child labour inspections, 2001						
Number of inspectors		Criteria used	Companies visited	violations	Sanctions to employers	Fines to parents

<sup>208</sup> LC 1308; However, the procedure manual developed by the DLSE for the use of labour inspectors contains no entry relating to parents' responsibility, communication from DLSE Deputy, 22/08/2002.

*Child Labour Legislation in the three societies*

California	103 total inspectors - 773,925 non-farm businesses, 89,000 farms. <sup>207</sup>	3378 firms for each inspector	1. No valid work permit 2. Violation of hours restriction 3. Employment of minors in hazardous occupations <sup>208</sup>	6841 (general inspection)	344	1. Fine <sup>209</sup> 2. Civil citation 3. Criminal citation	No citations/no fines
Netherlands	> 425 (1/4 used for child labour project) - 538,185 firms <sup>210</sup>	1325 firms for each inspector	Age of young worker Hours violation Rest period violation (night-rest, rest period during day, weekly rest-period, rest during vacation) No written RI&E document No provisions for young workers in RI&E Inadequate administration No work training for young workers Inadequate supervision of young workers	1523 (child labour specifically)	1133	1. Caution 2. Caution & written report 3. Caution and criminal citation 4. Criminal citation 5. Command to cease operations until offence corrected 6. Fine	Citation / fine: Fine 1/6 of fine to employers
Aruba	3 - 8274 firms <sup>211</sup>	2182 firms for each inspector	WRO violations		0	0	0

The fact that the messages embodied in statutes experience a certain change and may be adapted for use by different divisions of the legal system is in accordance with the proposition that social fields are self-contained, although capable of accommodating change, as posited in Luhmann's theory of communication.<sup>212</sup> However, the instances of non-communication, mentioned in this chapter, appear to be rather insignificant.

#### 7.4.1.2. Provisions by 'State'

##### *California*

##### Publicity

Despite the publication of a digest of the child labour provisions adopted during the 1990s by the California Division of Labor Standards Enforcement (DLSE),<sup>213</sup> the Administration had to concede, that the amendments have not led to a reduction in the number of violations. As a solution the establishment was proposed of a Resource

<sup>207</sup> 1997, <http://www.census.gov/epcd/ec97/ca/CA000.HTM>,

1999 <http://www.nass.usda.gov/81/lpedb/>.

<sup>208</sup> Letter from DLSE Deputy Chief, 05/08/2001.

<sup>209</sup> The ratio of fines redeemed to fines levied was between 45% and 70%, Bureau of Field Enforcement Statistical Report Calendar Year 1999; Fines may not be regarded as 'a severe financial deterrent' by big business, Lantos 'The Silence of the Kids: Children at Risk in the Workplace,' p. 69.

<sup>210</sup> 1999, <http://www.cbs.nl>.

<sup>211</sup> <http://www.arubian.net/database.html>.

<sup>212</sup> See Chapter 3, Section 3.2.



Center on Safe Jobs for Youth, that would be able to co-ordinate the various institutions involved and conduct public awareness campaigns.<sup>214</sup> However, the draft Bill to establish such a Centre has been rejected on financial grounds.<sup>215</sup>

#### Enforcement

Until 1998, when federal labour inspections targeted agri-businesses employing migrant farm labour which is often associated with child work,<sup>216</sup> no inspections have been conducted with the specific object of uncovering child labour violations, either by State or Federal compliance officers since the 1990 federal child labour sweeps mentioned in Section 7.2.1. However, a number of child labour violations are discovered each year in the course of general labour inspections.<sup>217</sup> Despite a provision for criminal prosecutions in the *Labor Code*, no cases have been brought in the course of the last decade.<sup>218</sup> Instead sanctions take the form of fines. Although the Code provides for criminal sanctions of up to \$10,000 or prison sentences,<sup>219</sup> these are levied for more serious infringements<sup>220</sup>. Civil penalties in the form of fines between \$500 and \$10,000<sup>221</sup> imposed for child labour violations, have in many cases not been collected, see Table 7.5. In California the DLSE does not appear to regard failure to pay the minimum wage as a significant violation of the child labour laws, as the only criteria used are 'failure to obtain a work permit', 'allowing a child to work longer hours than permitted' and 'Employment of minors in hazardous occupations', see Table 4.7..

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<sup>213</sup> Section 7.3.1.

<sup>214</sup> AB-1653, filed with the Secretary of State on September 24, 2000,  
<http://www.sen.ca.gov/archives/bill/current/AB/FROM1600/AB1653/T990309.TXT>.

<sup>215</sup> [http://www.sen.ca.gov/sfa/\\_00\\_DL02.HTM](http://www.sen.ca.gov/sfa/_00_DL02.HTM).

<sup>216</sup> <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>, children were found cutting grapes and harvesting onions in fields treated with pesticides in 1999,  
<http://www.nt.speical/day3story1.html> and <http://www.nt.speical/day4story2.html>, see also Section 5.5.1.1., United States, *Reports to Treaty Bodies*.

<sup>217</sup> For instance: in 1998: 293 child labour violations out of 5098 inspections, 344 out of 6841 inspections in 2000.

<sup>218</sup> Letter from the DLSE Deputy Chief, 05/08/2002.

<sup>219</sup> LC-1175, 1199, 1303, 1308, 1309.

<sup>220</sup> Figures derived from TIPP (Targeted Industries Partnership Program) reports,  
<http://www.dir.ca.gov/DLSE/tipp1997.htm>.

<sup>221</sup> LC-1391.

### *The Netherlands*

#### Publicity:

Pamphlets and leaflets illustrating child labour provisions in simple terms for distribution to the general public have regularly been published by the Ministry of Social Affairs and Employment<sup>222</sup> as well as a free telephone information service and a website providing guidance on part-time youth work have been provided.<sup>223</sup> In addition, annual information campaigns are waged by the Trade Union Federations to point out rights and duties of young workers.<sup>224</sup>

#### Enforcement

Since the enactment of the *AtW* and *NRK*, enforcement of the new legislation has been tightened. In the words of the 1998 pamphlet: "When the law and regulations are not observed, this amounts to an economic offence. Both employers and parents/guardians may be held responsible and could face criminal charges."<sup>225</sup> In case of criminal sanctions employers may be summoned before the economic court. If the charge results in a fine, the amount payable is a composite of fines for every breach of the provisions in either law.<sup>226</sup> In addition, the Labour inspectorate issued a memorandum of guidance for the use of labour inspectors in order to highlight key components of the inspection process, such as the risk assessment (RI&E), and explain ambiguous concepts such as 'light work',<sup>227</sup> later incorporated in the *NRK* as an

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<sup>222</sup> SZW - Directie Voorlichting en Documentatie (1998a). *Kinder- en jeugdarbeid aan strenge regels gebonden*, B022. den Haag, SZW.; SZW - Directie Voorlichting - bibliotheek en Documentatie (1998b). *Vacantiewerk, wie, wat, wanneer*, F423. den Haag, SZW, Directie Voorlichting, bibliotheek en Documentatie.

<sup>223</sup> 'Minister Vermeend opent website voor jongeren,' Nr. -2000/189, 28/09/2000, <http://www.minszw.nl/>, see also educational and general news websites: [www.onderwijsweb.com/web/algemeen/414.html](http://www.onderwijsweb.com/web/algemeen/414.html) and [www.nieuwsbank.nl/lnp/2000/09/28/E046.htm](http://www.nieuwsbank.nl/lnp/2000/09/28/E046.htm).

<sup>224</sup> <http://www.fnv.nl/bijbaan>,

<sup>225</sup> SZW - Directie Voorlichting en Documentatie *Kinder- en jeugdarbeid aan strenge regels gebonden*, B022, p. 4.

<sup>226</sup> For the level of fines:

<sup>227</sup> <http://www.minszw.nl/navigatiestructuur/informatie/arbo/boetelijn/boetelijn2-frame.htm>. Afdeling Arbeidsinspectie (1998c). *Nota arbeid door kinderen en jeugdigen (printout)*. den Haag, SZW.

amendment.<sup>228</sup> An example of work prohibited to fifteen year olds is work at a cash-register. However, according to the 1999 memorandum occasional use of a cash-register is permitted in the course of normal transactions such as serving customers, provided support is available in the presence of a responsible adult.<sup>229</sup> Yet a more recent pamphlet issued by the Ministry of SZW, prohibits work at a cash register under all circumstances,<sup>230</sup> which suggests different sections of the Ministry act without adequate coordination. Such a discrepancy could be interpreted as an example of the autopoeitic mode.

Several months before the start date of a programme of inspection, a concept design for the inspection exercise is circulated for comment among the personnel concerned.<sup>231</sup> The programmes of inspection are publicly announced by the Ministry<sup>232</sup> and the Trade Unions, both on television and in the press, with the view of generating maximum publicity. Inspection teams tend to be accompanied by reporters from the regional and national press.

Shortcomings can take different forms, such as permitting young people under sixteen to perform prohibited tasks, lacking adequate RI&E policy documents, including policies to counteract sexual intimidation or to provide qualified supervision, but also inadequate provisions for rest periods or employment of children under thirteen. Sanctions are higher for repeat offences.<sup>233</sup> However, as in California failure to pay the

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<sup>228</sup> Directie Arbeidsverhoudingen (1999). *Beleidsregel niet-industriële hulparbeid van lichte aard*; AV/A&M/99/36842. SZW.

<sup>229</sup> Rule 3:1., Directie Arbeidsverhoudingen *Beleidsregel niet-industriële hulparbeid van lichte aard*; AV/A&M/99/36842, p. 2. Amendments to the NRK.

<sup>230</sup> SZW (2000). *Kinder- en jeugdarbeid aan strenge regels gebonden*. s'Gravenhage, Ministerie van Sociale Zaken en Werkgelegenheid, p. 5. According to the Coordinating Labour Relations Specialist at the Ministry of SZW, it was decided in consultation between the legislator and the inspectorate to relax the regulation to accommodate corner shop practices, allowing young people to operate a cash register, when serving customers. Acting as cashier in supermarkets is prohibited, because of the ergonomics of operating scanning devices and the monotony of the work. Email communication, 12 March 2003.

<sup>231</sup> Arbeidsinspectie Regio Noordwest (1999). *Projectverslag Vakantiewerk 1999*; Project A 279. Amsterdam, SZW.

<sup>232</sup> E.g. Press notice 2000/117 on 19/06/2000.

<sup>233</sup> Arbeidsinspectie Regio Noordwest, *Projectverslag Vakantiewerk 1999*; Project A 279, p. 16; Arbeidsinspectie (2001). *Reguliere Vormen van Arbeid door Kinderen en Jeugdigen*

minimum youth wage does not appear to be included in the criteria used by the Inspectorate.

#### *Aruba*

According to a spokeswoman of the Aruban labour inspectorate the total division consists of only three inspectors instead of eleven as indicated to the ILO CEACR. No inspections specifically concerned with minors are conducted nor are any child labour statistics recorded and publicised.<sup>234</sup>

#### **7.4.1.3. Assessing and comparing enforcement provisions and practice**

The main shortcoming in all three jurisdictions is the failure to record any figures concerning the occurrence of part-time work by young people. Statistics are collected in connection with full-time work, but not published in comparable form. At most figures are recorded for violations of child labour provisions, namely in connection with businesses visited during the Netherlands holiday work campaign by the Labour Inspectorate, the only enforcement agency in any of the three 'States', concentrating on illegal work by under eighteens. Such inspections focus both on infringements of the *NRK*, i.e. times and hours legislation, and of the *Arbowet* 1998 concerning workplace misdemeanours, such as a failure to establish an annual RI&E document or to give safety instructions to young people. Neither of the two other 'States' keeps any systematic records of infringements of the child labour provisions.<sup>235</sup>

### **7.5. Accountability**

#### **7.5.1. Lack of essential data**

The compilation and publication of statistical data is an essential part of a Government's duty to account to its citizens for its actions. However, the incidence of part-time employment of young people below the age of entry into full-time labour does

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(inspection October - December 2000; 2nd phase first term 2001). Arbeidsinspectie, See Table 7.5.

<sup>234</sup> Telephone conversation with spokeswoman of labour inspectorate, 8/08/2002.

<sup>235</sup> See footnotes 210 and 236, this Chapter. Also telephone conversation with a spokeswoman of the Aruba Labour Inspectorate.

not form part of the official employment statistics of any of the three 'States'.<sup>236</sup> Therefore it is not possible to compare figures for numbers of economically active children (whether employed part-time or full-time), e.g. in the form of percentages of numbers of children aged between twelve and eighteen.

Estimates of part-time child work are available for the Netherlands only. The figures are based on the National Survey of School Children for the year 2000, comprising 13,000 children between twelve and eighteen out of a total figure of 1.118,659 in that age group, conducted by the National Institute for Information on Consumer Budgets.<sup>237</sup>

<b>Table 7.5. Paid Employment Children 12-18, Netherlands</b>		
	Part-time work (% of children in age-group)	Holiday work (% of children in age-group)
<b>Ages 12-13</b>	28%	21%
<b>Ages 14-15</b>	52%	40%
<b>Ages 16-17</b>	67%	54%

These figures should be treated with caution, as emphasised in the Netherlands second periodic report to the Committee on the Rights of the Child.<sup>238</sup> If States issue any annual reports on child employment, these tend to concentrate on labour inspection data. Even these figures are incomplete, as statistical information concerning child work consistently falls short of standards expected in recording adult employment data. For

<sup>236</sup> As indicated in Chapter 2, Section 2.4.1., employment statistics seldom include children under 16; also different age groups are often registered in different ways e.g. from age 16 in U.S. statistical tables, even though 18 is the age of the end of compulsory education in California. In addition, employment data for ages 16-65 are aggregated for the States by month. An estimate of child labour data for the whole of the U.S. can be found at <http://www.bls.gov/data/home.htm> (U.S. Department of Labor); In the Netherlands employment statistics are grouped by age band, e.g. 15-19, <http://www.cbs.nl>; On Aruba employment statistics are kept for workers from age 15 upward. (Aruba: Central Bureau of Statistics). Figures of young people working full-time in years 1994 (540) and 1997 (937) are available from the ILO at:

<http://www.ilo.org/public/english/region/ampro/portofspain/digest/aruba/aru04.htm>.

<sup>237</sup> Figure from the Central Bureau of Statistics, <http://www.cbs.nl/nl/cijfers/statline/index.htm>.

<sup>238</sup> Figures provided in the Netherlands second periodic report to the Committee on the Rights of the Child, CRC/C/117/Add.1, §§ 266-273.

instance, the California Department of Industrial Relations admits to having failed to keep records of occupational accidents relating to children and young people.<sup>239</sup>

### **7.5.2. Reports to Government and general public**

#### *California*

No reporting of findings of child labour violations to official bodies such as the Californian Senate or House of Representatives takes place. The figures used in Table 7.3 have been made available by courtesy of the Child Labor Coalition and through private research. Official reports on the general findings by the inspectorate are published every two years, but no information on child work has been included.<sup>240</sup>

#### *Netherlands*

As shown in Table 7.5 the Dutch reports aim at the analysis and evaluation of findings by inspection teams as well as the publication of statistical data of transgressions of the child and youth labour provisions. Reporting is taken seriously with final reports presented officially to Parliament,<sup>241</sup> which also generates maximum publicity. The Ministry's publicity section additionally issues notices to the Press covering the most important findings.

## **7.6. Comparing the four elements of child labour legislation.**

### **7.6.1. Rationale for child labour legislation**

Both the Californian and the Dutch labour laws stress the need for health and safety at work as their first priority. The Dutch legislation not only takes practical issues such as *sufficient time for other pursuits* into account, but also concepts not directly related to working activities such as friendship, participation, autonomy and emotional

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<sup>239</sup> § 1294.1(e): 'The lack of any comprehensive analysis or statistical reporting of children's occupational illnesses, injuries, and deaths, prevents Californians from understanding the types, causes, frequency, and severity of those occurrences or the full costs of child labor in this state. Other States, such as New York, have compiled those statistical analyses and reports as an essential part of protecting child workers (Note in the California Labor Code, following the provisions of the paragraph).

<sup>240</sup> California Department of Industrial Relations (2000). *1998-1999 Biennial Report*. <http://www.dir.ca.gov>.

<sup>241</sup> See accompanying letters to the final report of the 1999 vacation project, dated 21/12/2000 to the Chairs of both Chambers, ref. AI/CK/Amav-J/99/78175.

development. Work experience and income are mentioned as important objectives on the Californian DLSE site and in the comments on the Dutch draft legislation from the Council for Youth Policy. In addition, the latter examined the potential of part-time work to promote the personal growth and development of young people. Aruban legislation remains at a simpler stage, dominated by health and safety issues. The age of fourteen for entry into labour complies with the norms of the ILO 1973 *Minimum Age Convention* for States Parties unable to keep children at school until fifteen, although Aruba does no longer fall within that category.

#### **7.6.2. Comparing the regulation of specific types of work**

Working time is roughly equal for under sixteens in the various countries. Where differences are significant is the observation of rest periods, the length of the period for night rest for sixteen and seventeen year olds as well as certain types of jobs.

##### *Types of work*

Young people of thirteen and fourteen are allowed to engage in a certain amount of light, non-industrial work in the Netherlands, but no more than six hours a day and under supervision only,<sup>242</sup> which is in line with the requirements of the *Minimum Age Convention* and Directive 94/33/EC.<sup>243</sup> In California children under thirteen may legally be engaged in the physically demanding activity of hand-harvesting crops for up to eight hours a day, baby-sitting or door-to-door selling of sweets for charitable purposes.<sup>244</sup> As in California baby-sitting is considered an uncontroversial activity in the Netherlands, but only for children from age thirteen upward.<sup>245</sup> However, looking after small child entails a

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<sup>242</sup> 'Light work', NRK Art. 4:1-2.

<sup>243</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/labour/3394\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-dial/labour/3394_en.pdf).

<sup>244</sup> According to a 1998 survey by the Child Labor Coalition many of the selling operations have more in common with sharp practice than philanthropy. As many as nine companies found operating illegally in California have been charged.

<sup>245</sup> Specifically mentioned in the paragraph relating to the NRK, Art. 4:1. In the explanatory memorandum attached to the Act.

responsibility, which may be too much of a burden for a young person with little experience, unless her charges are asleep and parents are within reach.<sup>246</sup>

Another area, which is difficult to control, is that of industrial homework.<sup>247</sup> Although it is either not supposed to take place, as in the Netherlands, or is subject to regulation as in California,<sup>248</sup> several cases have come to light in the late 1990s. According to a Dutch report concerned with children of undocumented immigrants, young people under ten may be found folding leaflets until late at night.<sup>249</sup> Unregulated industrial homework practices have also been reported in California's Silicon Valley.<sup>250</sup> Although the poverty of certain groups of immigrants is a contributory factor, an important source of motivation is thought to be due to the work ethic of immigrant families.

Even more difficult to control is juvenile prostitution, whose root cause may lie in an abusive past, or be related to drug dependence. Although the U.S. has ratified the *Worst Forms of Work Convention* little appears to have changed in relation to child prostitution. Young people may still be cautioned for soliciting, while the welfare and rehabilitation of former child prostitutes tends to be left to the voluntary sector.<sup>251</sup> Although the Dutch Government contributes to the funding of refuges for street children and young prostitutes, this is a recent phenomenon.<sup>252</sup> Abuse within the family has not been officially recognised as contributing to child prostitution in the U.S., where 'the family' is still regarded as a sacrosanct institution. On the other hand, child sexual abuse, known to be a determinant of prostitution,<sup>253</sup> is being targeted by the Social Service

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<sup>246</sup> At least one fatal accident has been reported, 'trusted babysitter, 12, killed girl in her care', *Guardian*, 29/09/1999, p. 5.

<sup>247</sup> Homework is subject to the provisions of the Minimum Age Convention, ILO C177 *Home Work Convention* 1996, Art. 4g.

<sup>248</sup> LC-2658.

<sup>249</sup> Morelli, C. and K. Braat (1999). 1st ed. *Kinderen zonder status*. Amsterdam, Defence for Children International, pp. 62-63.

<sup>250</sup> Vietnamese families were found assembling circuit boards, in 'Underside of the New Economy', 24/03/2000, <http://www.wirednews.com/news/politics/0,1283,35177,00.html>.

<sup>251</sup> As, for instance, in the refuge for child prostitutes, whose Director CA-E agreed to an interview.

<sup>252</sup> Interview with NL-H, manager of a home for street children.

<sup>253</sup> Melrose, M. (1999). *One way street? Retrospectives on childhood prostitution*. London, The Children's Society, pp. 19-20.



Departments of the Netherlands and Aruba. However, Aruba's social work is underfunded and lacks resources to help traumatised children.<sup>254</sup> According to a recent survey the 1999 decriminalisation of adult prostitution in the Netherlands, whilst making sexual relations with minors under eighteen an offence, has not made any difference to the situation of juvenile prostitutes, whose activities have always been shrouded in secrecy.<sup>255</sup>

#### *Working hours*

In California sixteen and seventeen year olds may work up to forty-eight hours a week, while forty-five hours, is the maximum young people are allowed to work in the Netherlands. However, unlike the situation in Californian, school attendance by sixteen and seventeen year olds is explicitly rated as working time, see Table 7.2. Although the maximum working week is shorter in the Netherlands, a young person can reach the limit in less time by working up to nine hours a day. Differences in the times and hours restrictions can to some extent be explained by the different educational regimes of the countries in the comparison. As school finishes earlier both in California and on Aruba than in the Netherlands, at 3 and 1 p.m. respectively instead of at 4 p.m., more time is left for working activities.

#### *Rest periods*

Employers are obligated to make provision for rest periods during the day in both California and the Netherlands, including the Caribbean parts of the Kingdom. As the provision for rest periods has been omitted from one of the most accessible sources of Californian child labour law, the '*Child Labor Pamphlet 2000*', few employers or employees will be aware of this right of young employees.<sup>256</sup> On Aruba the rest period

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<sup>254</sup> Interviews with AR-T, AR-E and AR-A and AR-U, directors of children's homes or members of a social work team combating child abuse.

<sup>255</sup> Goderie, M., F. Spierings, et al. (2002). *Illegaliteit, onvrijwilligheid en minderjarigheid in de prostitutie een jaar na de opheffing van het bordeelverbod*. Utrecht, Verwey-Jonker Instituut, p. 114.

<sup>256</sup> Rest periods are obligatory in EEC Member States, see Art.-12 of Directive 94/33/EC. In the Netherlands doubt has been cast on the benefits for young people from the provision of rest periods during the day. Rest periods tend to be used as 'times to just hang around'.

amounts to half an hour, but only after 5 hours of work. In general children working for unregulated industries, such as housework, newspaper delivery etc. are not in a position to take advantage of provisions for rest periods, let alone be informed that such a right exists.

Because young people have more need than adults for regular periods of rest, the fact that under age employees are free to work in California during entire week without taking even one day off, is a cause for unease. In the Netherlands the law guarantees a continuous rest period of at least thirty-six hours once a week to young employees, whilst the Aruban Ordinance provides for a holiday either on Saturdays or Sundays. In addition, part of a child's vacation must be kept free for leisure activities, something lacking from both the Californian and the Aruban provisions.

California's provision for night rest, between 12.30 p.m. and 5-a.m. does not take account of the greater need for sleep of young people taken for granted in the Dutch regulations.<sup>257</sup> As a result Californian youths may get less sleep than in the Netherlands, where young employees have a guaranteed 12 hour nightly rest period and must finish work by 11 p.m. at the very latest. In the Antilles islands restrictions on work by young employees are even more strict, as they are not allowed to work after 7 p.m.

### **7.6.3. Response mechanisms**

Since 1996, when a small pilot project was conducted, the Netherlands has taken enforcement of child labour legislation seriously. The importance of publicity, both before and after the completion of inspection projects, is well understood. Inspections during the school vacation have become recurring events. Of late the inspectorate turned its attention to part-time work in term-time, viz. the "Regular forms of work by children and young persons" programme which had its inception in autumn 2000, with repeat inspections planned for the first quarter of 2001. In California, on the other hand,

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'Onderwijs als hangplek', *Brabant's Dagblad*, 29/06/1999. Perhaps the opportunity to 'hang around' and talk to other young employees is beneficial.

<sup>257</sup> See also footnote 79.

enforcement of child labour provisions is integrated with the general inspection. Very little in the way of publicity is generated. One gets the impression that, as employment of children and young people is not permitted on Aruba, it therefore does not exist and does not require any enforcement procedures.

Compared to California the Dutch labour inspectorate has more resources at its disposal, 400 inspectors to the 103 of the DLSE in relation to fewer businesses with employees. The Inspectors are also given a clear and reasoned mandate, allowing them to concentrate their energy on a specific section of the working population. This is no luxury in view of the more complicated arrangement in place to safeguard the welfare of the workforce, evident from the large number of infringements of the RI&E rules.<sup>258</sup> Both 'States' take the attitude that prevention is better than a cure, making a concerted effort to inform actors involved, whilst the Labour Department of the Island of Aruba does not perceive any need for measures to regulate the employment of young people, apart from prohibiting work by children under fourteen, but not paying any attention to the prolonged activities of bagging purchases in supermarkets.

#### **7.6.4. Accountability in practice**

Although no statistical information is collected concerning the part-time or full-time economic activities of children and young people, the Netherlands Labour Inspectorate is at present the only enforcement body in the three 'States' which issues official reports concerning its child labour inspections. As these are presented to Parliament as well as made available to the general public, concerned individuals or groups are able to make comments and query the standards operated by the Inspectorate, making the Netherlands the only one of the three 'States' to take the obligation of accountability at all seriously.

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<sup>258</sup> 1148 out of 1503 child labour violations in 1997. Infringements are not broken down into categories in the same way in the later reports.

### 7.7. To conclude

Whilst the various legislations have been drafted with the protection of a vulnerable section of the population as their primary goal, there is room for improvement at all levels. One can criticise the Netherlands for its failure to involve young people to a greater extent, while the implementation of child labour legislation in Californian and the Island of Aruba would benefit by a greater allocation of resources. Whilst taking advantage of children below the age of entry into labour is rightly prohibited as illegal, subjecting young people over fifteen to unacceptable working conditions cannot be denounced as abusive 'child labour' as sixteen and seventeen year olds tend not regarded as 'children' to be protected. Failure to provide a work environment suitable for people in their growth may even be legal if labour legislation is inadequate.

As regards juvenile prostitution, young people of sixteen and seventeen may still be cautioned for soliciting in California. A sexual morality, common in nineteenth century Europe, that blames women for the spread of sexual disease, still prevails on Aruba. Since the 2003 enactment of the *Landsverordening tot wijziging van het Wetboek van Strafrecht van Aruba*<sup>259</sup> 1991 no. GT 50, girls of age fifteen receive the same protection under the criminal law as boys of the same age. As indicated earlier, conformity with international standards, obligatory in Western European countries, is an important component of the regulation of the activities of young people, whilst American States are bound by Federal legislation, which is, however, far less strict than California State legislation. Too much reliance is put upon work permits for part-time work by children and young people involving schools as well as employers. First of all, the young persons concerned have little interest in legitimating their work situation unless this has obvious advantages. Generally young people are unaware of the fact that an employment relationship entails workplace rights to employees and that making such a relationship official by registering in itself confers protection from dangerous and exploitative work

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<sup>259</sup> In force 15 August 2003, amending the Aruban *Wetboek van Strafrecht* (Criminal Code)

situations, provided these rights are vigorously enforced. If registration of employees of any age is made obligatory, even if only to counteract tax evasion, the onus to contact a central registration office is on the employer.<sup>280</sup> Teachers, charged with registering pupils for employment, have other, often more pressing work-related priorities, while too many employers are interested in little apart from making a profit from a situation that appears to pose little risk. As long as unscrupulous employers are convinced that they can get away with paying fines too small to act as a deterrent, they are unlikely to take any steps to legitimise a temporary relationship. In addition, few people, whether the general public or individuals involved more closely, appear to have sufficient knowledge of the provisions concerned. This also appears to be the case in the Netherlands. In many cases labour legislation concerned with children and young people is too complicated and has not been publicised widely enough, whilst the regulation of teenage work is seldom presented as a matter of priority. In this respect one might expect that regular child labour sweeps cum publicity campaigns emphasising the importance of the issue, would help to bring it to the forefront.

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<sup>280</sup> See footnote 6, Chapter 8

## **8. Perceptions of child employment in comparative perspective**

### **8.1. Introduction**

Whilst the previous chapter covered the child labour legislation in force in the three States, this chapter examines the perception of young people's work and its regulation among respondents from different backgrounds in the societies under consideration. The first question is, whether parents, teachers and others involved with children, not to forget young people themselves, are aware of current provisions and the second, to what extent restrictions on part-time work are regarded as relevant.

The chapter consists of three parts: the first and second parts evaluate data from two questionnaires described in sections 8.2. and 8.3. The third part examines the interviews with professionals working in various capacities with children and young people, conducted in California, the Netherlands and on the island of Aruba. Because the involvement of these professionals with young people and their work was so varied, they were able to contribute specialist knowledge from different perspectives. Questionnaires and interview questions are provided in Appendices 1 to 3. As mentioned in section 3.6. cross-tabulation has been used to correlate sets of questionnaire data for the two States.

### **8.2. Attitudes of young people towards work**

#### **8.2.1. Evaluating youth questionnaires**

##### **8.2.1.1. Personal data**

The data have been collected as a convenience sample comprising seventy-one Californian and sixty-three Dutch young people, aged between twelve and eighteen, i.e. children of compulsory school age as well as young people of an age to work full-time. Although a number of clients of the Dutch youth information service, who completed the questionnaires, may have been full-time workers, the remaining respondents, who were either members of social youth groups or young people

receiving help with homework or additional school tuition, i.e. were still attending school. Both sets of data include responses from ethnic minorities children, as the participating Californian youth groups were ethnically mixed, and a number of questionnaires were completed by clients of two Dutch inner-city support groups for ethnic minority students. Apart from the last two groups, whose tutors were approached at a later stage, all child respondents were contacted via people who had agreed to an interview.<sup>1</sup> More urban child respondents participated in the Netherlands than in California, where most came from villages or small towns. Figures for participants, who had never worked, were slightly higher for California than for Dutch respondents.<sup>2</sup> More Californian than Dutch girls took part. Respondent data are presented in a table.

Table 1.1 Youth respondents' personal data									
	Age						Totals		
	12	13	14	15	16	17			
California	0	0	8	12	24	29	71		
Netherlands	3	5	11	11	15	18	63		
	Sex		Works/has worked		Residence				
	Boys	Girls	Yes	No	City	Small town	Rural	Not stated	
California	29	42	54	17	13	47	11		71
Netherlands	33	30	47	16	36	8	17	2	63

Despite a legal age of entry into labour of sixteen in the Netherlands, children may engage in light part-time work outside their own homes from thirteen upwards. The Californian Labor Code contains a number of exemptions allowing children under eighteen, although below the compulsory school age applicable to California, to engage in specific types of part-time work.<sup>3</sup> Although membership of the participating Californian youth clubs was open to young people between twelve and eighteen, no children under fourteen have completed any forms.

<sup>1</sup> See Chapter 3, Section 3.5.3.2.

<sup>2</sup> 28.2% against 20%.

<sup>3</sup> LC-1282-LC-1284.5, State of California Department of Industrial Relations - Division of Labor Standards Enforcement (2000). *California Child Labor Laws*. [www.dir.ca.gov/DLSE/dlse.html](http://www.dir.ca.gov/DLSE/dlse.html).



#### **8.2.1.2. Occupations by age**

Respondents were asked to select any jobs held from a list of fourteen occupations, regarded as typical children's jobs and list any others separately.<sup>4</sup> Some of the jobs form part of the unofficial economy, whilst several activities are illegal according to the legislation of either or both of the States in the comparison. Responses have been presented as a table according to criteria of legality and formality (see next page). Several types of work are illegal for young workers, because of their age and the type of activity. However, two other common reasons for the illegality of child work are not reflected in the figures, as questions concerning the possession of work permits<sup>5</sup> or official registration of their employment,<sup>6</sup> would have discouraged their participation.

Several respondents had more than one job, as reflected in the numbers of occupations mentioned in the table on the next page. Numbers ranged from forty-six children who had one job to one individual who engaged in seven different types of work. Several young people engage in occupations which could not be called 'children's jobs' by any stretch of the imagination. From the Californian sample two fifteen-year olds worked at a transit centre and as 'transport information officer' respectively. In addition, tutoring, teaching ballet, and acting as life-guard/swimming instructor, cashier or mailroom assistant were some of the more interesting and un-childlike jobs among the sixteen to seventeen age-group. However the responses 'dental work' and 'male escort' by a fourteen and sixteen year old respectively were rather more unexpected.<sup>7</sup> Otherwise community service in day-care centres, churches or hospitals was popular among Californian children of all ages.

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<sup>4</sup> The same list of typical teenage jobs was presented to adults for comment.

<sup>5</sup> Required in California.

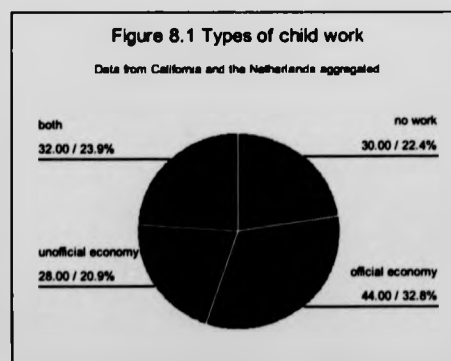
<sup>6</sup> Registration with the GAK (Joint Management Office) is obligatory as non-declaration of earnings is an offence, <http://home.fnv.nl/bijbaan/content/rechten.html>.

<sup>7</sup> Not necessarily to be discounted as a joke, see newspaper item concerning mobile phone calls to a seventeen-year old male escort, which disturbed lessons, *Handelsblad*, 1 June 1997.

Perceptions of Child Employment in Comparative Perspective

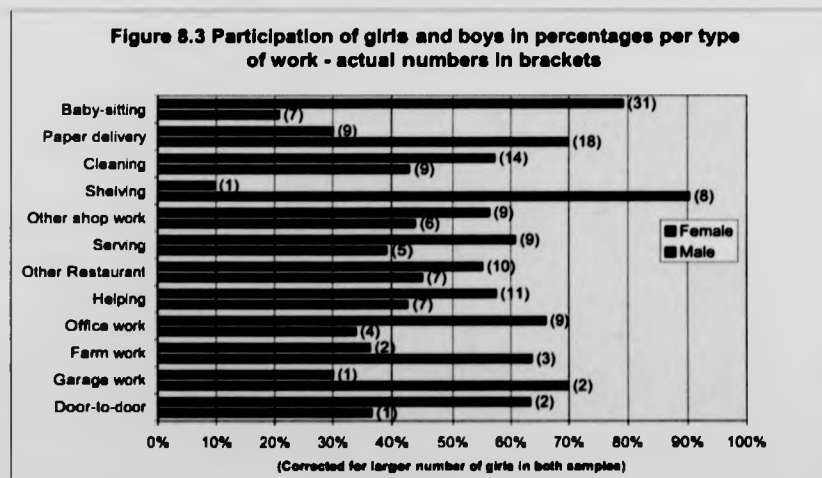
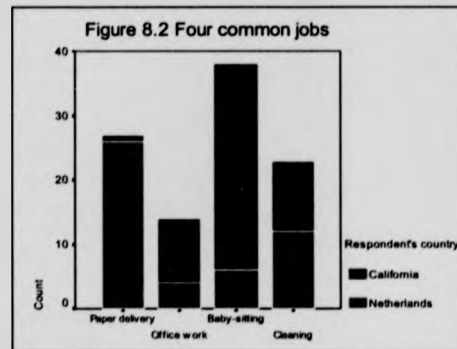
Table 8.2. Nature of work of child respondents <sup>a</sup>					
Informal / [Illegal]	California Illegal < 12	Netherlands Illegal	Informal / Legal	California	Netherlands
Door-to-door selling				3	
Cleaning		2 <sup>a</sup>		11	10
			Babysitting	32	6
			Helping	12	6 <sup>a</sup>
			Volunteering	2	
			Dog walking		1
			Box boy	1	
Formal / [Illegal]	Illegal < 16	Illegal < 16	Formal / Legal		
Paper-round		8		1	13
Milk delivery					1
Shelving				3	6 <sup>a</sup>
Shop work				8	7 <sup>a</sup>
Farm work					2
Serving in restaurants		2		9	3
Other restaurant work		2		9	8
Office work				10	4
Meat cutting in factory		1 <sup>b</sup>			
Cashiering		1			
Garden centre work		1 <sup>c</sup>			
Packing video tapes		1 <sup>d</sup>			

Fewer than a third of respondents worked exclusively in the informal economy.<sup>9</sup> Responses from Dutch fourteen year olds included catering and 'work in packing-shed' in addition to the ones mentioned earlier, with seventeen year olds engaging in market-gardening and pizza delivery. See also the chart on the next page.



- <sup>a</sup> Shaded boxes denote illegal work; double-framed boxes exemptions.  
<sup>b</sup> Illegal below 16 (here 13 & 15-year olds); <sup>c</sup> Illegal below 18; <sup>d</sup> Illegal below 15.  
<sup>e</sup> Legal at any age; <sup>f</sup> Legal at 13 (here, 13-15 year olds).  
<sup>9</sup> The figure includes thirty-two Californian baby-sitters.

There are striking differences regarding the popularity of four occupations between the two samples: baby-sitting, newspaper delivery,<sup>10</sup> cleaning and office work, see the graph on the right. Several other questions may be asked, for instance, whether there were any differences between jobs held by children living in rural areas from those in cities or between boys and girls.



Participation in types of occupation by respondents from large cities was similar to that of respondents from small towns and generally higher than by respondents from rural areas. There was little difference in participation in jobs such as cleaning, shop work and office work between respondents from cities and small towns, whilst

<sup>10</sup> However, newspapers tend to be sold in the street rather than delivered, which explains the difference.

babysitting was more common in small towns than either in cities or rural areas. Unexpectedly two young people employed in farm work both had an urban background. Differences in involvement by girls and boys in certain kinds of jobs, shown in the bargraph on the previous page, indicate that, as may be expected from the literature introduced in Section 2.5.1.1., certain types of work are more common for one sex than the other. Baby-sitting, cleaning, work in shops and offices tend to be female occupations, whilst boys engage in newspaper delivery, shelving, and work in farms and garages.

#### **8.2.1.3. Hours of work**

Several Dutch respondents worked longer on schooldays than the two hours permitted, whilst all Californians stayed within the three hour norm of the Californian law, see table 8.3.

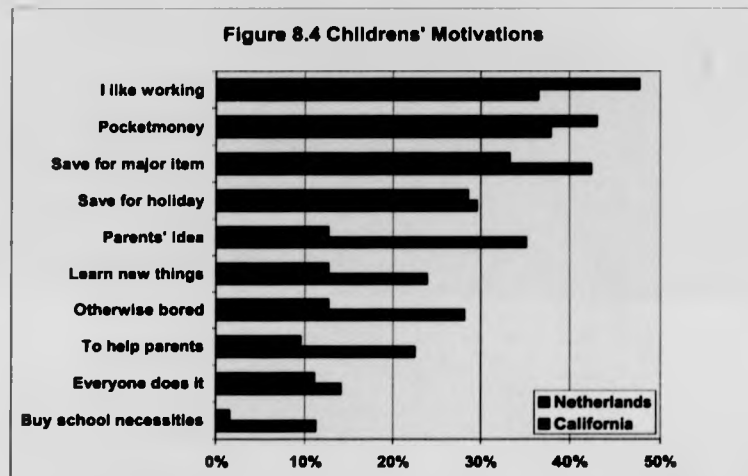
TABLE 8.3: HOURS CHILDREN SAID THEY SHOULD BE ALLOWED TO WORK				
	12-13	14-15	16-17	Totals
Not stated		3		3
1 hour	4	3	5	12
2 hours	2	7	21	30
3 hours	2	19	26	38
> 3 hours		16	29	45
As much as they want		1	5	6

On the other hand, two Californian youngsters worked longer than the eight hours permitted on a holiday, whilst the Dutch subjects kept within the law. When asked, how many hours children should be allowed to work after school, eight young people under sixteen from both samples thought they ought to be allowed to work more than three hours, that is to say, longer than permitted in either jurisdiction. In addition, two Californian and four Dutch respondents rejected all restrictions on working hours after school.

#### **8.2.1.4. Knowledge of child labour legislation**

One may assume that young people are motivated to observe the law because of specific reasons, for instance, there could be a relationship between a young

person's age, or her experience of part-time work and the degree of familiarity with the provisions. It has also been suggested, that girls are more responsible than boys and may therefore take more account of the regulations. Thirteen boys and nineteen girls

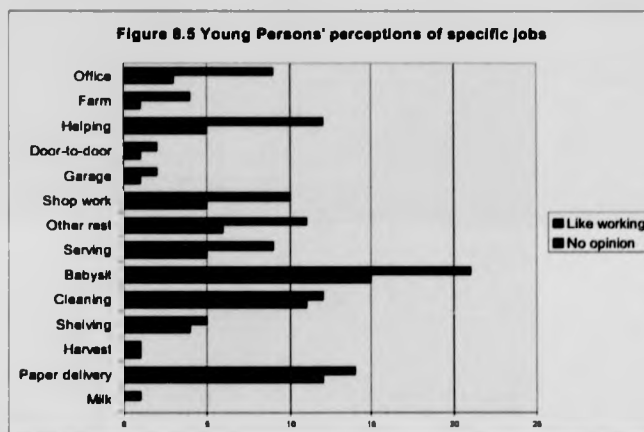


from the Californian sample professed to insufficient knowledge of child labour provisions, whilst fourteen male and twenty-two female respondents indicated their familiarity with the regulations concerning work after school. Fewer children in the Dutch sample, just over eleven percent of both sexes, were aware of the regulations.<sup>11</sup> All the Californian children under sixteen stayed within the permitted time after school, on the other hand four Dutch boys and two girls worked longer than the two hours allowed after school. In addition, two Dutch girls under sixteen and one girl and four boys over sixteen worked over eight hours on non-school days. However, two Californian males over sixteen were outside the law on holidays.

Correlating knowledge of child labour law with the number of hours young people are permitted to work after school gave the following results. Both Californian and

<sup>11</sup> The Dutch figure was skewed by the participation of a group of eleven ethnic minority girls, who indicated they had never worked or had any knowledge of labour legislation.

Dutch children under sixteen, who were acquainted with the provisions, remained within the legal working period after school.<sup>12</sup> On the other hand two Californian sixteen and seventeen-year olds worked more than the eight hours permitted, despite their knowledge of the law. Also, one Dutch fifteen-year old and two young people between sixteen and eighteen worked more than eight hours on a non-school day.



Therefore three young people were undoubtedly working illegally, with two more depending on the circumstances.<sup>13</sup> Three Dutch children under sixteen, who were familiar with the provisions, and twelve who were not, thought they should be allowed to work for three hours or more after school. In the case of California, three children under sixteen, who were familiar with the provisions, and four who were not, thought they should be allowed to work for more than three hours. Also, two sixteen and seventeen-year olds, one of whom was familiar with the legislation, claimed that young people should be able to work as long as they wanted.

<sup>12</sup> As Californian young people may work up to four hours after school, and Dutch sixteen and seventeen-year olds may not work more than eight, or, in some cases, nine hours a day, including time spent at school, these young people stayed within the law.

<sup>13</sup> Children of fifteen may work up to eight hours, and young people over sixteen up to nine hours in some cases, see Table 7.3.

#### 8.2.1.5. Children's motivations

One may ask why young people spend their leisure time working rather than engaging in recreational activities, unless they are forced to do so. A number of authors concerned with young people mostly working full-time, see child work as determined by poverty<sup>14</sup> and controlled by adults.<sup>15</sup> Whilst poverty and parental control are regarded as important determinants for child labour by Fyfe and the IWGCL, these two studies also stress the motivating force of traditional social values.<sup>16</sup> However, Fyfe recognises, that work may be experienced as important for its own sake,<sup>17</sup> whilst the IWGCL study points out, that working may be found more useful than school attendance.<sup>18</sup> A major difference between the first two studies and the latter ones is the importance paid to the views of the young workers themselves.<sup>19</sup> Many of the reasons mentioned in the IWGCL study apply to young people working part-time in the developed world as much as to the young people working full-time or attending training centres instead of following an academic type of education.<sup>20</sup>

<sup>14</sup> "... in the U.S. related to individual poverty combined with absence of genuine trade union support," Challis, J. and D. Elliman (1979), *Child Workers Today*. Sunbury, Quartermaine House (Anti-Slavery Society Study), pp. 63, 72.

<sup>15</sup> "Children are often forced to work . . .," "Parents think the child will be better off," societal attitudes, that say that children should work to support their families, "a form of education," Bureau of International Labor Affairs (1994). *By the Sweat and Toil of Children, Part I: use of Child Labor in U.S. export of manufactured products from industry or mining to the United States; a Report to the Committee on Appropriations, U.S. Congress*. Washington. <http://www.dol.gov/ILAB/media/reports/iclp/sweat/sweat.pdf>, pp. 21, 23.

<sup>16</sup> "Child work not only responds to economic forces; it reflects social and cultural patterns, including power relationships between adults and children," Fyfe, A. (1989). *Child labour*. Oxford, Polity Press, p. 5; "Responsibility training: "... their participation in domestic work from the age of four" and "Children can become involved in non-waged work, which forms part of a network of reciprocal social obligations," IWGCL (1998). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*. Amsterdam, Defence for Children International and the International Society for the Prevention of Child Abuse and Neglect, p. 27.

<sup>17</sup> "... a rite of passage to adulthood, Fyfe, A. (1989). *Child labour*, p. 4. see Chapter 2, footnote 266;

<sup>18</sup> "Children see themselves 'as learning something useful', 'as responsible for their family's survival,' or recognise, that work may have enjoyable features," IWGCL (1998). *Working Children: Reconsidering the Debates; Report of the International Working Group on Child Labour*, pp. 46-48.

<sup>19</sup> Reasons for working part-time were as varied as 'the need for money to be spent according to a young person's priorities', 'See a discussion of children's views on working in Chapter 2, Section 8.

<sup>20</sup> 'The experience of being in a work environment'

The chart on the next page gives an idea of the relative importance of the suggested reasons for the respective populations. Eight Californian respondents and one Dutch one considered expenditure on 'school necessities' important. In addition, sixteen Californian children indicated they wanted to help their parents compared to six Dutch ones. This may possibly be due to greater hardship among Californian than Dutch respondents. Many young people rated the pleasure of working at least as high as the need for additional pocket-money.

More children engaged in occupations such as 'helping', baby-sitting, farming and 'work in restaurants, shops or offices' expressed a liking for work than the ones employed in cleaning, shelving and newspaper delivery. However, there was a sense, that the idea of 'employment' carried more weight than the type of work, see graph below.

Thirteen children offered reasons of their own. From the Californian respondents three stated baldly: *I need money*,<sup>21</sup> whilst six others mentioned specific purposes, such as: *to save money for the things my mother will not buy for me*,<sup>22</sup> *just for everyday things like clothes and CDs*<sup>23</sup> or *for alcohol*.<sup>24</sup> A few offered *I like volunteering*<sup>25</sup> or *to help parents/other people*.<sup>26</sup> One respondent volunteered *Pay parents' debts*,<sup>27</sup> whilst a Dutch respondent expressed curiosity: *See how it is, and get experience*.<sup>28</sup> Perhaps the ultimate argument consisted of a laconic *Why not?*,<sup>29</sup> as if asking adults to justify the restrictions.

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<sup>21</sup> Ch6NL, Ch7NL, Ch54NL, Ch107CA.

<sup>22</sup> Ch130CA.

<sup>23</sup> Ch131CA.

<sup>24</sup> Ch113CA.

<sup>25</sup> Ch112CA.

<sup>26</sup> Ch70CA.

<sup>27</sup> Ch100CA.

<sup>28</sup> Ch21NL.

<sup>29</sup> Ch71CA.



As peer pressure is regarded a strong motivating force,<sup>30</sup> respondents were also asked how many of their associates, including their best friend, had a job. From both samples more young people between sixteen and eighteen with three or more acquaintances in employment,<sup>31</sup> also worked themselves, than those who had fewer working associates. One can, however, not infer any causal relationships from the figures.

### **8.2.2. Assessing youth questionnaires**

Whilst the majority of respondents worked in compliance with the legislation, a small number of young people ignored the regulations, despite being familiar with the provisions. However, the legislation of both States contains a number of confusing exemptions. For instance, Californian fourteen and fifteen-year olds are permitted to 'cook in plain sight of customers',<sup>32</sup> but not in restaurant kitchens. Similarly the Dutch rule is confusing, that sixteen and seventeen-year olds may work for nine hours a day, provided the total work time, including time spent at school, does not amount to more than forty-five hours a week. Although the legislation is confusing, this is not the whole picture: children may well be unacquainted with the provisions because of lack of interest in the subject. Although there have been a number of high profile publicity campaigns in the Netherlands, the level of knowledge of the provisions was even lower than that of the Californian children. In addition, the young people in the Dutch sample appeared to have less regard for the provisions than the ones in the Californian sample: *Does not interest me*, respondent Ch21NL declared, when asked whether he was familiar with the regulations. It is as though the law and the reality belong to different spheres. A standard reply that restrictions are for her own good, to a

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<sup>30</sup> Greenberger, E. and L. D. Steinberg (1986). *When Teenagers work: The Psychological and Social Costs of Adolescent Employment*. New York, Basic Books, p. 187; FNV Jongerensecretariaat (1998). *Onderzoek naar vakantiewerk en bijbanen van dertien- en veertienjarigen*. Amsterdam, FNV, p. 5.

<sup>31</sup> Nineteen Californian and thirteen Dutch young people, who knew three or more young people who also worked, against one Californian and one Dutch young person, who had fewer than three working acquaintances.

Californian girl's response "Why not?" to question 13, "why did you start working?" is likely to sound unconvincing without any further deliberation. As described in section 6.4.1. young people have become accustomed to being part of a consumerist framework, which continuously repeats the message that material possessions are not only an integral part of a person's identity, but also essential to find acceptance in the eyes of one's peers.<sup>33</sup> Children feel they are no longer able to depend on their parents' generosity for items, which tended to be regarded a luxury in the past, but are now thought of as 'everyday things', required to promote a young person's self-image. The necessary corollary of a world where children have been styled consumers, is a society, which allows them to become earners.

Although peer relations are thought to be an important influence on young people's preferences,<sup>34</sup> the fact that more children were in employment, who knew other young people who worked, than those who did not, tells little more than that teenage working is widespread. As only just over ten percent of respondents regarded 'everyone does it' significant as a reason to start working, no causal relationship can be inferred.

The next two sections, covering the evaluation of adult responses to questionnaire and interview questions, help to obtain a more rounded picture of the issue of child work, at the same time putting the objection 'why not?' into perspective. One question is whether adults, including professionals working with children and teenagers, regard particular activities as more 'appropriate for children', than others and for what reasons.

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<sup>32</sup> Description of an exemption in State of California; Department of Industrial Relations. (2000). *California Child Labor Laws 2000*, p. 17, see Chapter 7, footnote 109.

<sup>33</sup> Kline, S. (1993). *Out of the garden : Toys, TV, and Children's Culture in the age of Marketing*. London ; New York, Verso, p. 316.

<sup>34</sup> Mussen, P. H., J. J. Conger, et al. (1990). *Child development & personality*. New York, Harper Collins, p. 602; Kline *Out of the garden : Toys, TV, and Children's Culture in the age of Marketing*, p. 192.

### 8.3. Evaluating adult questionnaires

#### 8.3.1. Respondent Data

Respondents' personal data are presented in a table on the next page. Data are largely comparable between the two samples. For instance, both count nearly twice as many female respondents than male, and comprised approximately equal numbers of respondents living in large cities and small towns, as well as numbers of children between twelve and eighteen. The two samples differ, however, with regard to the numbers of questionnaires completed by professionals working with young people,<sup>35</sup> participants belonging to ethnic minorities and respondents involved with ethnic minority children. Slightly more questionnaires have been completed by respondents belonging to ethnic minorities than would correspond to the numbers of ethnic minority citizens for the two States.<sup>36</sup>

Table 8.4 Adult respondents' personal data									
Sex	Place of residence							Totals	
	Male	Female	Not stated	Large	Medium	Small town/ rural	Not stated		
California	30	48		39	4	19	16	78	
Netherlands	29	45	4	40	17	21		78	
Age Group									
	<20	20-29	30-39	40-49	50-59	>60			
California	7	23	19	11	14	4		78	
Netherlands	3	18	13	23	15	6		78	
Professional involvement with children									
	Teachers	Social workers	Therapists	Youth workers	Other		Totals		
California	25	16			5		46		
Netherlands	12	8	2		1	5	28		
Ethnic Group									
	Afro-Amer.	Chinese	Hispanic	Mixed race	White	S/E Asian	S.Asian	Other	Not stated
California	21	3	7	5	25	6	7	3	1
Netherlands	Moroccan	Surinam.	Turkish		Autochthonous <sup>37</sup>			Other	
	2	3	1		56	1		9	4
Other involvement									
	Children age 12-18	Not stated	Work with ethnic minority children	Not stated	Special needs work				
California	24	1		43	1			27	
Netherlands	23	1		19				3	

<sup>35</sup> Forty-six Californian and twenty-six Dutch respondents respectively.

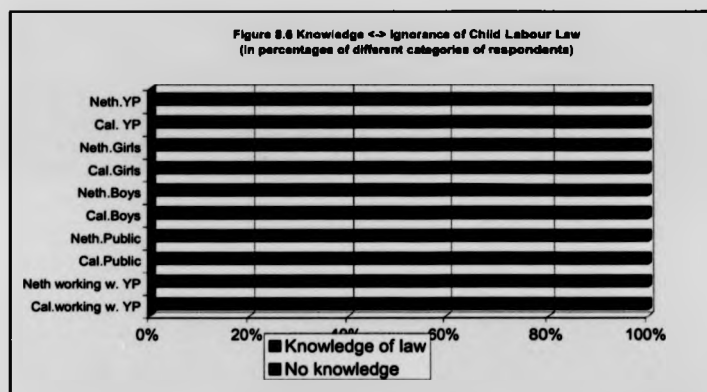
<sup>36</sup> Approximately 41% of Californian (<http://www.census.gov/>) and 17.5% of the Dutch population (<http://www.cbs.nl/nl/producten/artikelen/maatschappij/bevolking/b-15/b-15-01-06.pdf>)

<sup>37</sup> See Chapter 6, footnote 171.

### 8.3.2. Knowledge of current provisions

#### 8.3.2.1. Hours legislation<sup>38</sup>

Respondents, who were professionally involved with young people from either jurisdiction, were as poorly informed about the regulations as the general public: over half of respondents from either category professed ignorance of the number of hours children are allowed to work after school.



A bargraph of responses to question 5.3 by different categories of respondents suggests that young people were better informed than members of the general public, including professionals working with children and adolescents.

Californian professionals involved with young people were better informed concerning basic child labour legislation than the general public, whereas the figure was much lower for Dutch respondents, both professionals working with young people and overall. The fact, that the figure for 'knowledge of the law' of 'Netherlands professionals working with children was so much lower than the one concerned with Californian professionals, is puzzling. One may wonder, whether this could be a statistical anomaly. Californian respondents appeared to be unaware of the lack of

<sup>38</sup> Questions 5c-d.

provisions for day-time rest periods for young people. Well over half of respondents were unacquainted with any federal or supra-national provisions. However, Californian respondents had more knowledge of provisions of the *Fair Labor Standards Act* than their Dutch counterparts of EU regulations. More Californian than Dutch respondents, professionals working with children as well as the general public, regarded two hours of work after school about right, although shorter than the period allowed according to Californian regulations.

#### **8.3.2.2. Views concerning hours legislation**

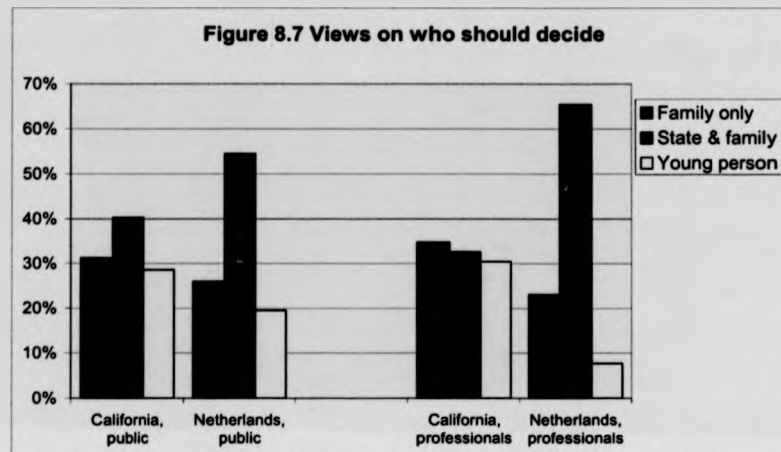
The next set of questions aimed at discovering to what extent the current hours legislation was regarded as beneficial for child workers.<sup>39</sup> Most Californian respondents, both among the general public and professionals involved with young people, thought the twelve hours work per week, regarded as too demanding by the Dutch respondents, acceptable. Yet a weekly maximum of eighteen hours work is legally permitted in all of the U.S. to young people over fourteen. Also, the majority thought seven hours work on a non-school day too long, despite the views of eight Californians, who found it too short, and forty-nine Dutch respondents, who thought the number of hours about right.

#### **8.3.2.3. Provisions for leisure time<sup>40</sup>**

Well over half of Californian respondents stated, that fifteen year olds should be allowed to work during the entire vacation as permitted by Californian law, rather than only part of the vacation period. This rose to two thirds in case of the professionals working with children. On the other hand three quarters of Dutch respondents were in favour of half the holiday period, longer than the permitted working period. Also, five of Dutch professionals thought two thirds of the holiday period should be left free in contrast to two respondents, who regarded working during the entire holiday period

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<sup>39</sup> Questions 5a, b and 6a, concerning the length of the working week and the time children were permitted to work when not attending school.



acceptable. Over eighty percent of respondents in both States indicated they were in favour of rest periods during the working day, rising to over ninety percent in the case of professionals involved with young people. Fewer than ten percent regarded the issue unimportant.

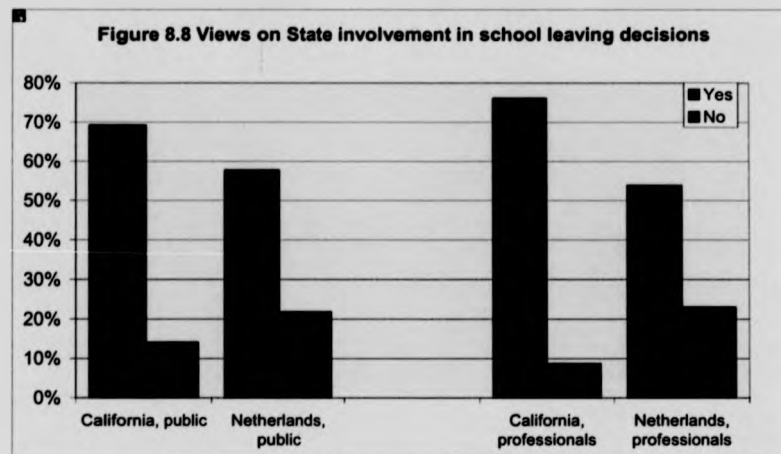
Evidently the respondents in the sample had little knowledge of child labour regulations, whether professionally involved with child development issues or overall. Although the majority considered the time allocated for work after school too long, there was little regard for the proposition that most of the vacation period should be kept free for pursuits other than work. On the other hand most respondents were in favour of the provision of rest periods during the day-time.

### 8.3.3. Children working for economic reasons

Amongst professionals working with children, more Californian than Dutch respondents regarded the decision, whether a young person should contribute to family income as a family issue rather than a state concern. In addition, twenty-two Californian respondents, fourteen of whom worked with young people, thought the

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<sup>40</sup> Questions 7 and 8a, whether fifteen-year olds should be able to work during the entire



young person should decide. In the Netherlands most respondents, whether involved with young people or the general public, thought that both the state and the family ought to have a say in the matter.<sup>41</sup>

Only two Dutch professionals working with children and fifteen overall, held that the decision should be left to the young person. According to approximately half of all respondents, the State should take measures to discourage young people from leaving school because of economic reasons, reflecting a high regard for education. This view was stronger among Californian than Dutch respondents.<sup>42</sup>

Clearly questions about the economic predicament faced by some young people struck a resonant note, as over twenty respondents from each sample added comments to this section. Four Californian<sup>43</sup> and twelve Dutch<sup>44</sup> subjects thought the State should guarantee an adequate income to parents to allow young people to stay in education without having to act as providers. Two Dutch respondents favoured

<sup>41</sup> holiday period, and views relating to the provision of rest periods during the day-time. Twenty against seventeen.

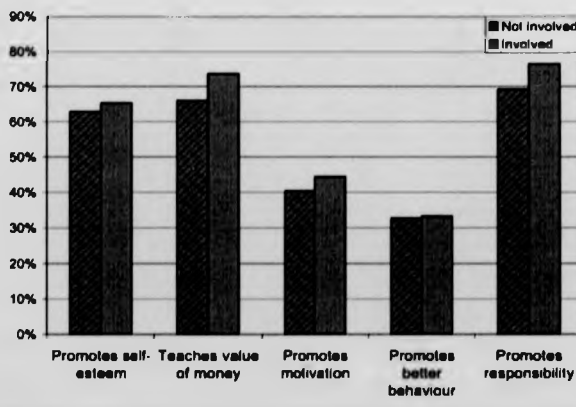
<sup>42</sup> Fifty-four to forty-five among the general public.

<sup>43</sup> CA-11, CA-15, CA-54, CA-73.

<sup>44</sup> NL-108, NL-111, NL-114, NL-116, NL-118, NL-119, NL-126, NL-135, NL-141, NL-146, NL-152, NL-176.

combined family/study allowances: "The state needs to create conditions, ensuring that he/she does not feel coerced - family allowances, no school fees."<sup>45</sup> Three others regarded the issue as one of protection against abuse from the young person's family,<sup>46</sup> whilst two focused on both educational and leisure aspects. "Make education exciting so that young people will be keen to stay at school."<sup>47</sup> and "Very important that the young person keeps some time for him/herself."<sup>48</sup> Even when long working hours are prohibited, enforcing regulations is fraught with difficulties. "There needs to be a balance of what kids & parents want & what the law allows/restricts. For many kids the family welfare is of first importance, especially in Hispanic families. The laws & reality are miles apart. I have seventeen-year olds working nearly full-time (40 hours) during term time in some cases. This is illegal, but enforcement is difficult."<sup>49</sup>

Figure 8.9 Conceptions of part-time work benefit



<sup>45</sup> NL-8, NL-119.  
<sup>46</sup> NL-107, NL-108, NL-152.  
<sup>47</sup> NL-102.  
<sup>48</sup> NL-106.  
<sup>49</sup> CA-69.



Clearly public perception of work for young people under eighteen is in favour of activities young people may find stimulating,<sup>50</sup> enabling them to take part in the adult world of work without feeling constrained by family circumstances. Many respondents, in particular in the Netherlands, considered the role of the state 'as enabler' very important.

#### 8.3.4. Benefits of part-time work

Over sixty-five percent of respondents in all categories regarded working by children as beneficial, although one Dutch and eight Californians professionals working with children disagreed. As the graph below shows both the general public and people involved with children rated the potential of part-time work to promote responsibility highest, with understanding the value of money a close second.

According to respondents from both societies,<sup>51</sup> additional benefits lay in the social sphere, as young people would gain experience of the world outside the school gates. *"Opportunities to interact with people in a work situation, lets them feel they are contributing members of society."*<sup>52</sup> Three Californian respondents stressed the educational value of part-time work: *"It teaches self-discipline,"*<sup>53</sup> and *"Commitment, punctuality, human relations other than their peers! To be alert & aware of their surroundings."*<sup>54</sup> Child work served to keep potential troublemakers out of mischief: *"Helps them to stay away from gang-related destructive activities."*<sup>55</sup>

##### 8.3.4.1. The relative importance of education, leisure and work

About half of respondents thought teenagers should be able to spend time after school in a combination of homework, leisure and economic activities, a figure slightly lower among individuals involved in child development issues.

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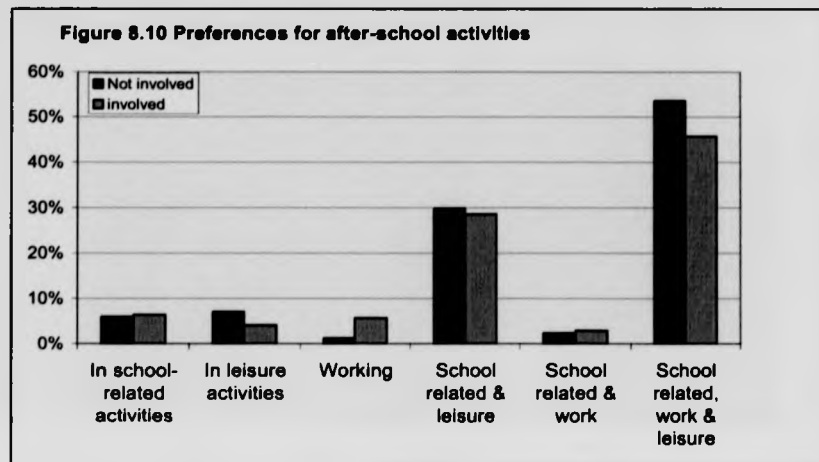
<sup>50</sup> See also van Beckhoven, A. P. M. (1991a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*. Den Haag, Directoraat-Generaal van de Arbeid van het Ministerie van Sociale Zaken en Werkgelegenheid, p. 50.

<sup>51</sup> CA-60, CA-72, NL-104, NL-112, NL-117, NL-124, NL-146, NL-152, NL-176.

<sup>52</sup> CA-60.

<sup>53</sup> CA-59.

<sup>54</sup> CA-44.



However, a significant number, in particular among the Dutch respondents - two fifths, rising to nearly half of professionals - took the view that time after school should be spent in homework and leisure. Few favoured one single out-of-school type of activity.

#### 8.3.4.2. Perception of different types of work

Responses to question 12, which asked respondents to rank occupations according to their detrimental or beneficial character, were comparable between the two states. Only one occupation, 'door-to-door selling'<sup>56</sup> was considered detrimental by a majority of respondents.

Several other jobs such as paper rounds, baby-sitting and shelving, which are generally performed away from the public eye, tend to be considered suitable for young people under sixteen. On the other hand certain more visible occupations, such

<sup>56</sup> CA-30, suggestive of a perception of children as a force of destruction, see Chapter 2, Section 2.3.1.2.

as restaurant work, are, at least in the Netherlands, strictly the domain of sixteen to eighteen year olds. This was confirmed by the comment of a Dutch respondent, just a few years older than the young people being investigated: *"Too demanding physically - I know from experience."*<sup>57</sup>

Several other occupations deserve further comment. Newspaper delivery, which tends to take place in the early morning before school hours, was considered suitable by forty percent of respondents. However, children have complained of negative working conditions, such as the weight of bundles of newspapers, in particular weekend editions.<sup>58</sup> Despite the arduous nature of hand-harvesting field crops, which gave rise to the sobriquet 'stoop-labor', the majority of Californian respondents were enthusiastic about harvesting and other farm work associated with healthy outdoor-living, which is permitted to twelve year olds in California. Two respondents had their doubts,<sup>59</sup> for instance: *"Whose farm & doing what?"*, which suggests that appropriate working conditions depend in essence on individual employers. Shelving and cleaning were regarded as beneficial by about forty percent of Dutch and over half of Californian respondents, but rated 'wholly beneficial' by only a handful, with cleaning in particular regarded as 'wholly detrimental', according to a sixth of Dutch respondents. As one respondent commented: *"Not so much the nature of the work, but possible monotony, doing the same job for a long time, in bad posture, under high pressure, is detrimental."*<sup>60</sup> 'Office work' was rated second highest of all types of child work, possibly because of its perceived educational value, though this was not confirmed by any comments.

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<sup>56</sup> Its supposedly benign fund-raising character has been questioned by the Child Labor Coalition, see Chapter 7, footnote 245.

<sup>57</sup> NL-136.

<sup>58</sup> *Commentary Art. 9:1, NRK*; Heptinstall, E. (1998). 'Children at work: healthy or harmful?' *Children and work in the UK: reassessing the issues*. B. Pettit. London, Child Poverty Action Group, p. 99; Maas, J. H., Ed. (2000). *De Tijd dwingt; Evaluatieverslag Landelijk Project Krantenbezorging; A136, A021*. Roermond, Arbeidsinspectie, p. 12; Chapter 7, section 7.3.2.1.

<sup>59</sup> CA-7, CA-81.

<sup>60</sup> NL-139.

The third highest rated job was 'baby-sitting', permitted to children of all ages according to Californian law.<sup>61</sup> The fact, that it entails responsibility for another human being, did not seem to be taken into account by more than a handful of respondents, two of which singled out baby-sitting as too demanding for under-sixteens: *"How much responsibility can he/she bear? I would not have any reservations to have my youngest child babysit at thirteen, but would for my eldest at fifteen."*<sup>62</sup> Both 'garage work' and 'helping neighbours' were rated highly with the latter considered 'beneficial' or 'wholly beneficial' by over three quarter of all respondents, except one, who thought more information about the conditions of work was needed, asking *"Which garage, which neighbours?"*<sup>63</sup>

Both Californian and Dutch respondents suggested other possible occupations for children under sixteen, most of which would be classified as educational and charitable rather than lucrative, as though engaging in economic activities was not quite acceptable for young people. Examples were: *"Tutoring younger children,"*<sup>64</sup> and *"Yardwork, painting, walking dogs for neighbors, grocery shopping to help someone housebound."*<sup>65</sup> Only one respondent was less single-minded about the non-profit character of child work: *"A job they like to do & enjoy."*<sup>66</sup> In the words of one respondent *"It depends on the weight and duration of the work, whether beneficial or detrimental."*<sup>67</sup>

Most respondents regarded part-time work by young people beneficial provided a balance was struck between educational, leisure and economic free-time pursuits. However, this should be the child's own choice instead of being dictated by economic necessities. Apart from several respondents voicing caution, in all probability adults

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<sup>61</sup> 18, Opinions California Attorney General 114 (1951).

<sup>62</sup> NL-178, also NL-136.

<sup>63</sup> NL-178.

<sup>64</sup> CA-72.

<sup>65</sup> CA-44, NL-146 and NL-153.

<sup>66</sup> CA-8.

<sup>67</sup> NL-108.

regard certain jobs acceptable for children, because they are customarily performed by children, rather than on account of any serious consideration of work content. A number of the occupations make demands on physical strength that might be too demanding for persons still in their growth or could expose them to dangers they might not recognise. Other occupations rely on a sense of responsibility, which depends more on an individual's personality than her age. Although several respondents were aware of these issues, most appeared to accept at face value, that the suggested occupations were suitable for teenagers.

### **8.3.5. New legal provisions**

Questions 13-16 in this section draw on provisions introduced by legislation adopted during the 1990s. In case of the Netherlands, the questions concern the regulation of the work of thirteen and fourteen-year olds, permitted to engage in part-time in their own neighbourhood, and of young employees of sixteen and seventeen. As regards California, the questions were in relation to special regulations for work in the entertainment sector..

#### **8.3.5.1. Age-related provisions**

More Californian than Dutch respondents thought work by thirteen to fourteen-year olds 'in their own life-world' would be beneficial, both on days when there was no school<sup>68</sup> and on schooldays.<sup>69</sup> The majority of respondents held, that labour regulations for sixteen to eighteen-year olds ought to be different from those relating to adults. Also, sixty-six Californian and sixty-eight Dutch subjects thought this age-group should continue to follow some sort of formal education, as forming an essential precondition for a satisfying career. Although a High School grade was mentioned as the minimum requirement to get a job,<sup>70</sup> others thought that more was required: "High

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<sup>68</sup> Fifty-five compared to thirty-two.

<sup>69</sup> Thirty-seven and fourteen.

<sup>70</sup> CA-F.

School does not prepare students for the job market."<sup>71</sup> However, not all respondents regarded education solely as the gateway to a satisfying career, as several subjects mentioned reasons such as "general development,"<sup>72</sup> or "to learn citizens' rights and obligations."<sup>73</sup> Arguments to raise the school leaving age to eighteen included "To help them mature into responsible adults,"<sup>74</sup> or with the argument, that young people would be able to make more considered decisions. "A form of 'complementary' education acts as a kind of 'oasis' site to distance oneself from the job, and make choices for one's own future."<sup>75</sup> Two respondents raised the argument that education should not merely be linked to age and place.<sup>76</sup>

As can be expected in a state where sixteen-year olds are legally allowed to drive, fifty-one Californians felt comfortable with the idea of driving by sixteen and seventeen year olds, whilst eleven Dutch respondents were in favour. Both figures were lower in relation to 'driving for reasons of work'.<sup>77</sup> More Dutch than Californian respondents thought 'working unsupervised at an assembly line'<sup>78</sup> should be restricted.<sup>79</sup> In addition, half of Californian and most of Dutch professionals working with young people expressed reservations,<sup>80</sup> expressed as: "One's thoughts stay put at the assembly line."<sup>81</sup> An earlier comment about 'possible monotony' is also applicable.

As to the question whether sixteen to eighteen-year olds should be prevented from working between 10 p.m. and 6 a.m., forty-four, i.e. over half of the Californians agreed with the proposition, and all but one of Dutch respondents thought so. The ratio

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<sup>71</sup> CA-15, also CA-5, CA-7, CA-8, CA-12, CA-14, CA-15, CA-21, CA-30, CA-38, CA-80, CA-88, CA-87, CA-73, CA-74, NL-108, NL-115, NL-117, NL-123, NL-128, NL-130, NL-155, NL-166 and NL-174.

<sup>72</sup> CA-45, NL-103, NL-104, NL-105, NL-106, NL-109, NL-111, NL-118, NL-119, NL-120, NL-121, NL-122, NL-129, NL-137, NL-139, NL-145, NL-146, NL-150, NL-153, NL-159, NL-163, NL-176.

<sup>73</sup> NL-153.

<sup>74</sup> CA-29, apparently unaware of the school-leaving age of eighteen in California, and NL-139.

<sup>75</sup> NL-176.

<sup>76</sup> CA-40, NL-152.

<sup>77</sup> Respectively twenty-eight and two.

<sup>78</sup> Not allowed in the Netherlands.

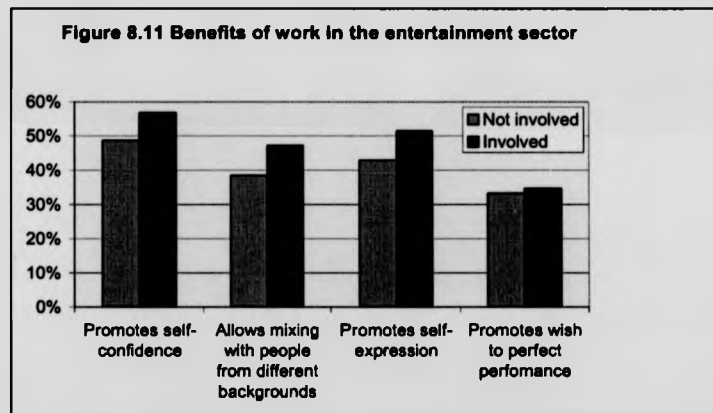
<sup>79</sup> Fifty-two and forty-four.

<sup>80</sup> Twenty-three and twenty-one respectively.

was similar among professionals working with young people. Only a few respondents were familiar with the provisions for night rest.<sup>82</sup>

#### 8.3.5.2. Work in the entertainment sector

Both states have adopted child labour legislation containing special provisions for the case of the entertainment industry. In California the new legislation is concerned above all with hours regulation, support for education and the question of who should be in charge of the young performer's earnings.<sup>83</sup>



As these particular issues had already been addressed in the Netherlands in the 1980s, Dutch legislation puts greater emphasis on potential mental and emotional difficulties, due to early celebrity status.

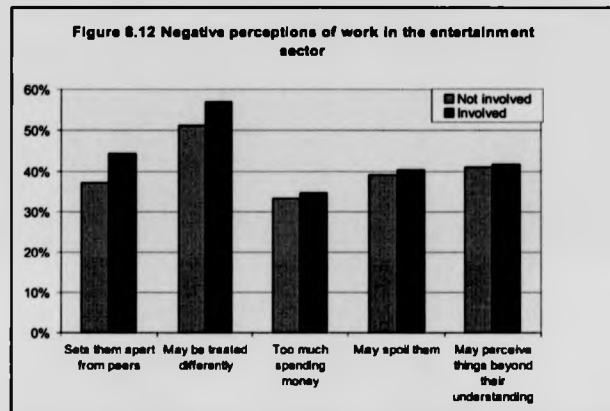
Questions concerned to what extent emotional aspects were regarded important and whether Dutch responses would reflect the fact, that the legislation was framed with those aspects in mind. Although three Californian and one Dutch respondents expressed approval of work in the entertainment sector, e.g. "Expand their creativity,"<sup>84</sup> the majority was sceptical, predicting psychological costs. "Too much pressure to

<sup>81</sup> NL-118.

<sup>82</sup> More than a fifth of Californians or a tenth of Dutch subjects.

<sup>83</sup> See Chapter 2, footnotes 50 and 51.

confirm to society's view on external beauty, too much pressure in general<sup>85</sup> and, "The company's interest is uppermost, without any pedagogical background, knowledge, interest for the child."<sup>86</sup> One Californian and three Dutch respondents drew attention to the potential for exploitation by parents.<sup>87</sup>



#### 8.3.5.3. Need for special measures

The majority saw a need for both special legal and organisational measures for near-adult workers,<sup>88</sup> reflecting an outlook at odds with the rationale for the Dutch regulations for sixteen and seventeen-year olds.<sup>89</sup> In contrast a fifth saw no need for special measures. One respondent proposed the inclusion of 'competitive sports',<sup>90</sup> a concern taken into account in the later interview sessions, but dismissed as irrelevant by most respondents.

In two cases responses were markedly different between the two samples, with regard to the legal provision for night-rest and the issue of driving by individuals over

<sup>84</sup> CA-59.

<sup>85</sup> CA-73.

<sup>86</sup> NL-138.

<sup>87</sup> CA-76, NL-152, NL-153, NL-176.

<sup>88</sup> Sixty-one out of the total number and thirty-eight professional Californian respondents, seventy Dutch respondents overall and twenty-three out of twenty-six Dutch professionals.

<sup>89</sup> See Chapter 7, section 7.2.2.



sixteen. In all likelihood the latter is a reflection of the fact that young people are not allowed to apply for a driving licence until eighteen in the Netherlands. On the other hand driving by sixteen and seventeen-year olds is routine in the U.S., even though car accidents account for a quarter of work-related deaths of this age-group in the U.S.<sup>91</sup> Californian respondents were more positive towards the idea of working for the entertainment sector than Dutch subjects. Perhaps one should accept that legislating for all occasions is almost impossible and agree with CA-72: *"Potential for damage or benefit, depending on the circumstances."*

### 8.3.6. Work and rights - CRC - beneficial or detrimental?

Only five Californian respondents regarded ratification of the CRC imperative, and three times as many Californians than Dutch thought ratification unhelpful.<sup>92</sup> As the *Convention* has already found its way into Dutch society, the arguments of those rejecting the case for ratification would have been of interest, but no reasons were given. On the other hand two Californians indicated, why they thought ratification undesirable: *"Family Business,"*<sup>93</sup> reflecting the view that introduction of the CRC would damage family cohesiveness.<sup>94</sup> The second was based on the misconception, that accepting children as holders of rights gives free rein to innate destructiveness: *"The child has too much freedom given and not earned. They are out intimidating the world because of 'their rights'."*<sup>95</sup> Another respondent was hesitant: *"I would have to see what laws are now in place to make a well-thought-out decision,"*<sup>96</sup> whilst five subjects gave no reasons. Two Californian<sup>97</sup> and four Dutch respondents<sup>98</sup> commented on the connection

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<sup>90</sup> NL-153.

<sup>91</sup> NIOSH Child Labor Working Team (1997). *Special hazard review, Child labor research needs : recommendations from the NIOSH Child Labor Working Team*. Atlanta, Ga, U.S. Dept. of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, p. 6.

<sup>92</sup> Respectively ten and three.

<sup>93</sup> CA-57.

<sup>94</sup> Kilbourne, S. (1998). 'Opposition to U.S. Ratification of the United Nations Convention on the Rights of the Child: Responses to Parental Rights Arguments.' *Loyola Poverty Law Journal*, Spring 1998, pp. 55-112.

<sup>95</sup> CA-44, see Chapter 2, Section 2.3.1.2.

<sup>96</sup> CA-66.

<sup>97</sup> CA-5, CA-69.

between children's rights and child work: "*The U.S. is a corporate world. I sadly doubt that we will ratify the articles, or that they will be followed. Employers benefit from cheap, part-time labor*",<sup>99</sup> and "*Extremely important, however, the CRC lacks a requirement for on-site medical care for child workers.*"<sup>100</sup> This reservation applies to conventions concerned with work by young people in general: although Art. 13(d) of the ILO *Minimum Age Recommendation* stipulates provision of 'medical care', no Instrument calls for such care to be available on the premises.

Arguments against ratification in the U.S. are fuelled by inadequate and, on occasion, misleading information. Although a number of respondents saw the *CRC* as a model for countries to adhere to and a yardstick for domestic regulations, many had either never heard of the *Convention* or thought ratification would not make any difference. These attitudes would come to the fore even more in face-to-face discussion.

#### **8.4. Assessing adult questionnaires**

Several respondents added comments to the completed forms, others mentioned, that they too had children or grandchildren who worked long hours, that younger brothers and sisters never joined a family outing, because of weekend jobs. A number of subjects had themselves held part-time jobs in the past. Knowledge of legal provisions is inadequate, both among professionals working with children and the general public. In many cases people appear to have little idea of what is involved in certain occupations assuming, that they are suitable, perhaps because young people customarily perform tasks of this kind. The majority thought work by under-eighteens had commendable aspects, which should be complementary to education. Whilst several respondents indicated awareness of the fact that family hardship is a significant factor in industrial countries as well as in the Third World, three times as

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<sup>98</sup> NL-102, NL-123, NL-136, NL-176.

<sup>99</sup> CA-69.

<sup>100</sup> NL-136.

many Dutch subjects as Californian regarded the role of the State important in keeping young people from leaving school prematurely. The majority of respondents regarded education after sixteen as required to putting the finishing touches to a not-quite complete human being, by re-shaping young people into employable prospects,<sup>101</sup> or supplying them with the general knowledge required for a full adult existence.<sup>102</sup> In addition, education was credited with the ability to impart the skills of citizenship as well as a sense of responsibility. Only two respondents referred to the importance of education for people of all ages.

### 8.5. Analysis of interview responses<sup>103</sup>

As indicated in Section 3.5.4.3. a number of professionals working with children and young people agreed to an interview. The particular nature of their involvement with young people is presented in the form of a chart:

Primary school teacher, highest form, inner-city/special needs	CA-D, CA-S, CA-L, CA-M	NL-I	AR-V, AR-P, AR-F, AR-O
Middle / High school teacher	CA-R, CA-K, CA-C	NL-J	AR-Z, AR-I, AR-R
Official teachers' union		NL-Y	
School social worker			AR-B, AR-D
Youth leader/social worker	CA-P, CA-A, CA-Q	NL-B, NL-P	AR-A, AR-C, AR-K, AR-N, AR-U
Youth Information Centre Official		NL-F	
Director facility for problem youth/ child prostitutes	CA-E	NL-H, NL-G, NL-V	AR-T, AR-E
Working with child offenders		NL-O, NL-C (supervising task punishments)	AR-X1&X2
Head of police section youth and vice			AR-Q
Teaching / supporting ethnic minority children	CA-I, CA-Q & inner-city teachers in 1.	NL-Q, NL-T, NL-E, NL-N	AR-S
Official of organisation for child support	CA-F	NL-Z, NL-W,	AR-Q1&Q2
Supporting former child stars	CA-Y		
Involved in social work policies		NL-R	Also youth leaders in 3.
Involved in education policies			AR-Y, AR-W
Involved in research on child poverty		NL-S, NL-A	
Involved in child labour issues		NL-L, NL-D	

<sup>101</sup> Fifteen Californian and nine Dutch respondents.

<sup>102</sup> One Californian and twenty-one Dutch respondents.

<sup>103</sup> Using the coding facilities of the qualitative analysis package Atlas/TI.

Several of these professionals fulfilled more than one function, for instance, several social workers involved in policy decisions for the Aruban Department of Social Affairs were also actively engaged as youth leaders and/or members of an association combating child abuse in addition to their work for the Aruban Administration. The outcome of the interviews with professionals working with children and young people in the U.S., the Netherlands and Aruba is discussed in accordance to the following themes.

1. Perception of the nature of child labour
2. Perception of practices considered child labour/exploitation
3. Child work in the light of attitudes to class, gender and ethnicity
4. Views of children's motivations
5. Perception of the *CRC* as a standard

#### **8.5.1. Child labour as defined by interview respondents**

In response to the question what subjects understood by the term 'child labour', there were a number of recurrent factors. These were: low age, coercion, harming a child's development by depriving her of her schooling or childhood, minimal or no pay, exploitation through long hours, and suffering a child to work in defiance of the law. Responses are discussed in the same order.

##### **8.5.1.1. Age-related definitions**

Among Californians the theme of age tended to be presented in the form of specific ages,<sup>104</sup> such as twelve<sup>105</sup> or sixteen, both mentioned twice, either on its own or combined with other elements, such as either exploitative conditions or work for payment. According to two respondents: "*Everything before the age of sixteen is child labour*"<sup>106</sup>, in particular, if long hours could lead to developmental implications. Four subjects thought that the term 'child labour' could also refer to young people under

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<sup>104</sup> Mentioned by CA-C, CA-F, CA-H, CA-P, CA-Q, CA-R, CA-S, CA-Y, CA-X.  
<sup>105</sup> CA-R.  
<sup>106</sup> CA-C, CA-Y.

eighteen,<sup>107</sup> when age was combined with other elements, such as coercion,<sup>108</sup> working conditions,<sup>109</sup> or lack of access to education.<sup>110</sup>

In the Netherlands four respondents only saw child labour as determined by age, and that in general terms: *"a very young child, associated with exploitation,"*<sup>111</sup> with two subjects referring to specific ages. On the other hand, seven Aruban respondents defined child labour according to age criteria: *"hard labour of youngsters under fourteen, or fifteen,"*<sup>112</sup> together with elements of coercion and/or pay, advanced by three subjects.<sup>113</sup>

#### 8.5.1.2. Coercion

A Californian teacher referred to organisational practices, which preferred the cheapest and most vulnerable of workers at the expense of adults. *"as soon as the student turned old enough to work, they had to work forty or fifty hours, because they could get a job much easier than the parents."*<sup>114</sup> Another speculated to what extent the term depended on organisational context, wondering whether work for parents should be regarded as child labour.<sup>115</sup>

A recurrent theme among Arubans was the element pay/low pay coupled with coercion and/or long hours: *"if a minor child is exploited to earn money for the family"*<sup>116</sup>, interpreted as 'lack of choice'.<sup>117</sup> A teacher also mentioned cases where the motivation stemmed from a sense of obligation rather than straight coercion: *"Obligated, but also socially obligated, if income at home is inadequate."*<sup>118</sup> Similarly three Dutch respondents<sup>119</sup> defined child labour in terms of economic necessity and lack of choice.

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<sup>107</sup> CA-B, CA-H, CA-Q, CA-X.

<sup>108</sup> CA-Q.

<sup>109</sup> CA-X.

<sup>110</sup> CA-S.

<sup>111</sup> NL-E, NL-I.

<sup>112</sup> AR-E, also AR-C, AR-W.

<sup>113</sup> AR-N.

<sup>114</sup> CA-B, compare the example of seventeen-year olds working almost full-time (CA-69), section 8.3.3.

<sup>115</sup> CA-L.

<sup>116</sup> AR-K, AR-U.

<sup>117</sup> AR-T, AR-D.

<sup>118</sup> AR-N.

<sup>119</sup> NL-A, NL-S, NL-T.

#### 8.5.1.3. Developmental considerations

Two Californians<sup>120</sup> defined the term 'child labour' in the context of detriment to a child's education as: "a distraction from education, from the opportunities to child development [ . . . ] and robbing the child of her childhood." The use of the term 'childhood' in the sense of a priceless commodity is emotive, suggesting, that children are in danger of losing something precious.<sup>121</sup> Five Dutch respondents focused on harm to education,<sup>122</sup> and three others referred to harm to healthy physical and mental development: "if it deprives them of time for leisure."<sup>123</sup> Here 'leisure' is a precious commodity, that can be stolen away from the owner.

#### 8.5.1.4. Use of formal definitions

One Californian and two Arubans referred to the legal age of entry into labour: "An actual job performed by someone under the age of eighteen, because that is what the law says".<sup>124</sup> Two Dutch professionals employed by child development agencies made mention of definitions used in the two ILO Conventions targeting child labour<sup>125</sup> and the CRC,<sup>126</sup> which combine most of the elements, while another queried the usage of the expression, 'engaging in heavy work', used in the regulations.<sup>127</sup>

#### 8.5.2. Objectionable child work

Several respondents referred to instances of child work encountered in the course of their work, which they regarded exploitative. Some of these practices, such as child prostitution, are unacceptable by any definition, including the ones used in International Conventions, whilst others constitute a more subtle and less tangible form of abuse. An example of the latter is the custom of *older sisters ending up taking care of*

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<sup>120</sup> CA-E.

<sup>121</sup> Here the sense is 'carefree time of life', compare the conception of childhood in Chapter 2, section 2.3.1.2. The word is used in a similar sense by CA-B and CA-S and AR-T. The concept of childhood is used in a different sense by NL-E, as 'period in which children are still developing both physically and mentally'; also by NL-O, in the sense of 'period before the age of majority'.

<sup>122</sup> NL-J, NL-O, NL-V, NL-Y, NL-Z.

<sup>123</sup> NL-D, NL-V, NL-T.

<sup>124</sup> CA-Y; under sixteen by AR-A, AR-B, despite the age of entry into labour of fourteen.

<sup>125</sup> NL-L.

<sup>126</sup> NL-Z.

younger siblings,<sup>128</sup> regarded unobjectionable and taken-for-granted, if occasional and of short duration. However, caring activities may infringe a child's rights to education and leisure, if such caring becomes systematic, as mentioned by two Aruban respondents. "*The mother had twins and the fourteen-year had to stay home to look after them.*"<sup>129</sup> Like babysitting, certain types of work are considered typically female.<sup>130</sup> Because women are regarded as natural carers and home-makers, such tasks tend to devolve on them, to the extent that, in particular among ethnic communities, girls may be removed from school to look after the parental home as soon as they reach the school leaving age.<sup>131</sup> Attitudes towards boys and girls rooted in gender and/or ethnic preconceptions leading to different occupations are discussed in more detail in section 8.5.3.

Questions concerning work in the entertainment sector tended to be associated with child pornography and prostitution, both in California and the Netherlands, with another Californian talking with derision of: "*that type of sexual, degenerate Hollywood stuff.*"<sup>132</sup> Several subjects associated work for the 'entertainment sector', modelling and also competitive sports with vicarious parental aspirations, referring to the tendency of parents to project their own unfulfilled longing for fame and recognition onto their offspring. "*Inherent expectations that the kid will do something the parent never had a chance to do,*"<sup>133</sup> sometimes giving rise to excessive pressure on these young people to succeed. Whilst demanding activities such as modelling and participation in beauty contests were regarded as primarily due to parental aspiration, respondents referred to other types of demanding child work arising in a family context, such chores on the

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<sup>127</sup> NL-F.

<sup>128</sup> CA-B.

<sup>129</sup> AR-R, similar cases mentioned by AR-B, and CA-F.

<sup>130</sup> There are exceptions, as boys too sometimes take care of younger siblings (AR-B).

<sup>131</sup> NL-Y.

<sup>132</sup> CA-S.

<sup>133</sup> CA-M.

farm<sup>134</sup> or helping in Chinese family restaurants.<sup>135</sup> The following section concentrates on two occupations where young people have little or no choice, namely work due to financial hardship, and juvenile prostitution, regarded as exploitation rather than work by respondents in all three States.

The belief that poverty is strictly a Third World issue, that does not affect countries with social security provisions, is shown to be a fallacy by the facts, most clearly in California. Living in poverty is a reality for many Californians: *"the minimum wage is about \$6.25 and in most urban areas, just to support a family, you need somewhere between \$12 and \$18."*<sup>136</sup> In the Netherlands poverty is much more hidden.<sup>137</sup> In contrast poverty was not associated with life on Aruba, although three respondents drew attention to two categories of *"families living below the social minimum,"*<sup>138</sup> which according to several respondents are in a vulnerable position in all three States, namely single mothers and undocumented immigrants.

#### 8.5.2.1. Poverty-related child work

Ten Californian respondents, mostly teachers working in inner-city schools,<sup>139</sup> referred explicitly to poverty: *"Half of the kids I work with are poor"*<sup>140</sup> and *"we do have families that are homeless"*<sup>141</sup>. According to ten respondents many young people try to help out: *"most of the students were in independent studies, [ . . . ] because they had to help provide for the family. [-.-] School came totally second rate, and it was about making the money."*<sup>142</sup> Younger children unable to make a significant financial contribution,<sup>143</sup> may still play an essential part in the family economy. *"They are not working away, and they are not getting paid, but they have to baby-sit, clean the house, wash the dishes, make dinner,*

<sup>134</sup> NL-B.

<sup>135</sup> NL-B, NL-C, CA-I.

<sup>136</sup> CA-F.

<sup>137</sup> NL-S, see Snel, E., T. van der Hoek, et al. (2001). *Kinderen in armoede: opgroeien in de marge van Nederland*. Assen, Van Gorcum, p. 15.

<sup>138</sup> AR-N.

<sup>139</sup> CA-B, CA-C, CA-F, CA-I, CA-J, CA-K, CA-L, CA-I, CA-S, CA-Y.

<sup>140</sup> CA-C, CA-M.

<sup>141</sup> CA-I.

<sup>142</sup> CA-B, also CA-I, CA-M, NL-D, NL-B, NL-E, NL-N, AR-B, AR-N, AR-R.



even at elementary level; helping your family out is just the norm, you have really no choice."<sup>144</sup> 'Helping' may be perceived as a moral duty.<sup>145</sup> But 'helping' easily slides into exploitation encroaching on a child's right to education: "instead of letting them go to the tutor for academic help, the parent has taken them to go and clean houses."<sup>146</sup>

Six Dutch respondents considered poverty an important factor: "hidden poverty in rural areas, much more noticeable in inner-cities,"<sup>147</sup> affecting one-parent families particularly hard.<sup>148</sup> A contributory factor is the cost of secondary education, which has risen after educational reform. "With several children in secondary education, a family on income support is unable to afford the cost. Therefore the burden and cost of education contributes to a divided society."<sup>149</sup> In consequence certain categories have little alternative but looking for part-time work. Examples are ethnic minority children,<sup>150</sup> but also young people from farming communities hit by the slump in agriculture.<sup>151</sup> However, if children have to contribute to the family budget, social security measures are inadequate.<sup>152</sup> According to a researcher in child poverty issues many young people below the school-leaving age respond by taking a job in order to save for essential items parents are unable to provide. An example is the purchase of a moped, indispensable for school attendance in areas without effective public transport. According to one respondent, work, which left young people no choice, should be regarded as "a form of child labour that occurs here, but is not regarded as such."<sup>153</sup> The same individual also pointed out that young people have been known to leave school "on the face of it because they have lost interest; but the real reason is to boost family income,

<sup>143</sup> CA-F.

<sup>144</sup> CA-I.

<sup>145</sup> van Beckhoven, A. P. M. (1990a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*, p. iv.

<sup>146</sup> CA-I.

<sup>147</sup> NL-S, also NL-I, NL-L, NL-O, NL-Q, NL-T.

<sup>148</sup> NL-A; An important factor is the process of individualisation, leading to one-parent families. Snel, E., T. van der Hoek, et al. (2001). *Kinderen in armoede: opgroeien in de marge van Nederland*, p. 15.

<sup>149</sup> NL-S.

<sup>150</sup> NL-B.

<sup>151</sup> NL-S.

*because they have suffered hardship for most of their lives.*" Instead they pretend to have lost interest in completing their education in order to forestall parental objections.<sup>154</sup> Helping parents financially is on occasion presented as a form of family cohesiveness, but only if temporary: *"we are short of money, it would be good if we could share, if you could earn something extra."*<sup>155</sup>

Eight Aruban respondents referred to young people seen bagging groceries for most of the weekend in supermarkets,<sup>156</sup> a standard occupation of young people under fourteen. Many of these irregular child workers are immigrants, who engage in money generating activities both for reasons of hardship and out of boredom, unable to attend school, if they are undocumented and have a poor command of the Dutch language. Although most native Aruban children were said to attend school,<sup>157</sup> young people sometimes left for financial reasons according to one respondent: *"kids stop going to school, and that school is not much valued, because their family needs financial support."*<sup>158</sup>

#### 8.5.2.2. Prostitution

Child prostitution, one of the worst forms of child labour, targeted both by the ILO *Convention C182* and the Optional Protocol 'On the Sale of Children', is known to take place in California on a large scale. Two respondents talked of juvenile prostitution as motivated by poverty: *"We have children that have prostituted themselves to make some money,"*<sup>159</sup> in this case referring to older teenagers, age sixteen or seventeen, possibly compelled by deprivation or a drug habit. Other respondents regarded other causes at least as important: *"All over California, youngsters are doing it for lack of money, lack of*

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<sup>152</sup> NL-I.

<sup>153</sup> NL-S.

<sup>154</sup> NL-S.

<sup>155</sup> NL-E, NL-N.

<sup>156</sup> AR-C, AR-D, AR-F, AR-O, AR-P, AR-Q, AR-T, AR-U, AR-V.

<sup>157</sup> According to AR-V most native Aruban children stay at school until sixteen. However according to a 1999 report 1207 children did not attend school (*Amigoe*, 23/11/1999).

<sup>158</sup> AR-E.

<sup>159</sup> CA-I, CA-B.

self-esteem, lack of respect."<sup>160</sup> The principal of a home for former child prostitutes, some of them well below the age of consent, including eleven and twelve year olds, blamed abuse in a child's early life: *"Most children involved in prostitution have been sexually abused as children. So for some of them, the act of prostitution is that they feel they psychologically take control of the abuse. They feel sometimes, that it is a passive acceptance of a social reality."*<sup>161</sup> *"This is what they want of me, this is what I shall do. I therefore take control of it and make men pay me for it, so that is my dad at home, my uncle or whoever is that person, who may be coming to take me."* Referring to early experiences of many of these children,<sup>162</sup> the same subject pointed out, that *"children probably never went to school much on a regular basis when they were small, because they were sexually abused. At some point, just in the beginning, they thought that all children do this with their family members and at some point they realise that they are significantly different and they flee their home and they flee the abuse."*<sup>163</sup> The sexual commodification of children speaks most clearly from an example of Native American boys abused as female prostitutes. Such abuse may comprise ritualistic elements: *"boys that come from the Indian reservation sometimes and they have been sexually abused and they arrive dressed in full drag. . ."*<sup>164</sup> Few young people, if any at all, take a conscious decision to engage in prostitution. *"I think boys would tell you that it is a more conscious decision, and they choose to do that. In America the largest number of boys who are on the streets, are going to be identified as being homosexual to the parents and the parents push them out of the house. When they are out of the house, they find to play that daddy role that sexually abused them. I think it has more to do with the makeup of the male*

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<sup>160</sup> CA-K.

<sup>161</sup> Confirmed by the statement "There is a large overlap between child abuse, child sexual abuse, and CSEC," University of Pennsylvania School of Social Work (2001). *Final Report from the North American Regional Consultation on the Commercial Sexual Exploitation of Children*. <http://www.ecpat.net/eng/index.asp>, p. 38.

<sup>162</sup> The majority of the former prostitutes in the home concerned was white, approximately 40%, with 30% Latinos, 30% Afro-Americans and some Native Americans and Asians.

<sup>163</sup> CA-E.

<sup>164</sup> CA-E.

psychology when they say that they chose to do it than that they really did."<sup>165</sup> Decisions by girls often depend on machinations by their pimps: "So the degree of deciding to be a prostitute, they did it, because they love him, they did it, because they thought it the way they have that damned money."<sup>166</sup> All Californian respondents thought prostitution of young people below the age of eighteen was exploitation: "It cannot be monitored like work, if someone takes extra liberties with merchandise, that is what we are talking about."<sup>167</sup> Two respondents were adamant that a young person would not have the maturity to take such a decision. "Better to legalise prostitution, but make the minimum age I would say, twenty."<sup>168</sup>

Juvenile prostitution is also an all too common phenomenon in the Netherlands. In addition to sexual abuse in the child's home, mentioned by two subjects,<sup>169</sup> heroin-addiction,<sup>170</sup> trafficking of adolescent girls for work in sex-clubs leads to a high incidence of child prostitution.<sup>171</sup> There have also been cases of seduction of ethnic minority girls by 'loverboys'.<sup>172</sup> The principal of a refuge for street-children counted many former prostitutes among his charges: "They have been mostly abused, or they stumbled into the practice, no conscious career choice. It is different, if they choose to do so consciously." [Until they feel ready to leave,] "we give them a place where they may feel at home."<sup>173</sup> According to Dutch professionals working with children, if prostitution were to be regarded as a career, it should be regarded as dangerous work, prohibited in accordance with ILO norms.<sup>174</sup>

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<sup>165</sup> Compare the view, that juvenile male prostitutes saw themselves as providing a professional service, van der Poel, S. (1991). *In de blisls: professionele jongensprostitutie in Amsterdam*. Arnhem, Gouda Quint, p. 117.

<sup>166</sup> CA-E.

<sup>167</sup> CA-S.

<sup>168</sup> CA-C.

<sup>169</sup> NL-O, NL-E.

<sup>170</sup> NL-O, NL-E.

<sup>171</sup> NL-P. Numbers estimated to amount to 1000 to 1500 girl prostitutes each year, [http://www.minjust.nl/b\\_organ/naps/nieuws/sec\\_liefde\\_te\\_koop.htm](http://www.minjust.nl/b_organ/naps/nieuws/sec_liefde_te_koop.htm).

<sup>172</sup> NL-B also NL-E, NL-N, NL-Q, see Chapter 7, footnote 153.

<sup>173</sup> NL-M.

<sup>174</sup> NL-L.

Child abuse rather than child prostitution was said to be a problem on Aruba. Although there had been instances of young people involved in prostitution, it was not regarded as a major problem.<sup>175</sup> Any indications to the contrary were based on hearsay rather than concrete evidence. One respondent mentioned young girls hanging around certain hotels *"One hears and sees things, how in certain hotels certain things happen, but it tends to stay hidden."*<sup>176</sup> A social worker, who also happened to work for an organisation combating child sexual abuse, saw sexual abuse as leading to prostitution, because of the tendency of abused children to devalue their bodies even further.<sup>177</sup> Another social worker confirmed, that incidental prostitution took place *"girls go with older men for the love they don't receive at home, they're given clothes, jewellery - 'someone who spoils me'."*<sup>178</sup>

### **8.5.3. Implications of gender, ethnicity and class**

According to several respondents, discrimination on multiple grounds, sometimes affecting youth work, still sours relationships. Such concerns cannot be dismissed as irrelevant, if children grow up in an atmosphere of prejudice, caused by inequalities of gender, ethnicity or class. Four Californian respondents called attention to a racial discrimination rooted in the past that continues to afflict their society, *"compounded by the historical realities of five-hundred years of exploitation in which the white was the intelligent superior."*<sup>179</sup> Several individuals drew on personal experience: *"Even if you had a college degree, you would still be treated as a subordinate, as less than a person".*<sup>180</sup> Such prejudices could be ascribed to *"the complex interaction, between where you live and where you go to school. Many American schools are still very*

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<sup>175</sup> AR-Q, confirmed by a communication from Fundacion Respeta MI, to the effect, that the 'youth and vice' section of police was unaware of incidents of that nature (5 may 2003), see however Chapter 7, Footnotes 160 and 161.

<sup>176</sup> AR-W.

<sup>177</sup> AR-C.

<sup>178</sup> AR-K.

<sup>179</sup> CA-S.

<sup>180</sup> CA-I.

*segregated, not like they used to be, with a rule, that said black children cannot go there.*"<sup>181</sup>

Although less overt than in California, ethnic segregation and discrimination also exists in the Netherlands: *"We daily encounter discrimination."*<sup>182</sup> Schools with a predominant immigrant population<sup>183</sup> are shunned by Dutch students because of low expectations of ethnic minority children, which carry over into the work sphere. *"People's image of the work of a Moroccan youngster."*<sup>184</sup> Also, several young people from a minority background had difficulty finding work.<sup>185</sup> A respondent from an ethnic minority community drew attention to the fact that immigrants from a low educational background contribute to ethnic divisions, by removing their offspring from school, as soon as they turn sixteen. *"better start working, have an income and learn on the job."*<sup>186</sup> Also, ethnic minority girls may be removed from education to help at home, because schools tend to be mixed.<sup>187</sup> While not openly segregated, like keeps with like: *"Antillian children do not mix much with Dutch children."*<sup>188</sup> Although the Aruban population is racially mixed, ethnic divisions still exist.<sup>189</sup> There were differences of opinion concerning the contribution to household work by migrant children: *"migrant children are given far more responsibilities and opportunities for independence, including at home,"*<sup>190</sup> whilst another respondent suggested gender attitudes were important among certain ethnic groups, resulting in more household duties for girls than boys.<sup>191</sup> In addition, class distinctions come to the fore on Aruba, where the inferior position of immigrants from Latin America is expected to lead to social problems.<sup>192</sup>

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<sup>181</sup> CA-F, see also Chapter 6, footnote 186.

<sup>182</sup> NL-C, NL-N, NL-Q, NL-T.

<sup>183</sup> NL-E.

<sup>184</sup> NL-C.

<sup>185</sup> NL-Q.

<sup>186</sup> NL-Q, NL-D.

<sup>187</sup> NL-Q, NL-Y, NL-R.

<sup>188</sup> NL-T.

<sup>189</sup> AR-R, AR-W.

<sup>190</sup> AR-C.

<sup>191</sup> AR-K.

<sup>192</sup> AR-A, AR-B.

Ethnic stereotyping led on occasion to generalised statements. For instance, immigrant families are thought to rely more on help with domestic chores from offspring in California, than 'Anglo' parents.<sup>193</sup> Such duties fall on girls, conditioned from a young age to being considerate and helpful, who in consequence are burdened with more household chores than boys.<sup>194</sup> *"a division of labour where the girls in the family do a lot of the housework, taking care of younger siblings, and the boys seem a lot of times not to have to do as much."*<sup>195</sup> Such attitudes may become self-fulfilling, leading to more exploitation of girls than boys,<sup>196</sup> although contradicted by one respondent.<sup>197</sup> Despite largely equal treatment of males and females in the Netherlands,<sup>198</sup> when it comes to housework, equality is forgotten as *"part of a sex-specific socialisation, which forms part of our culture."*<sup>199</sup> The same applies to Aruba. Although several subjects maintained that boys and girls were given the same tasks,<sup>200</sup> others disagreed: *"the woman is the one, who stays at home and cooks and cleans, and I find that very much so in Aruba."*<sup>201</sup>

A very gender-specific activity, promoted by ambitious parents in the U.S., is the participation of girls in beauty contests. *"The kind of ideology that is around, young girls in entertainment, whether through modelling, the kind of beauty pageants. It sets kind of in a girl's mind this idea that their appearance is foremost."*<sup>202</sup> Even more than in California Aruban girls are subject to a beauty cult, promoted by fond parents: *"Some*

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CA-X.

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Gender stereotyping still common in affluent countries, Morrow, V. (1996). 'Rethinking Childhood Dependency: Children's Contribution to the Domestic Economy.' *The Sociological Review*, p. 66.

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CA-M.

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CA-J, also CA-H, CA-M, CA-Q.

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CA-C.

198

NL-S.

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NL-O, NL-D.

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AR-P, AR-F, AR-K.

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AR-E, AR-N, compare the concern on the lack of gender equality voiced by the Committee on the Elimination of Discrimination Against Women, 'Office of the High Commissioner for Human Rights. (2001). *Second and third periodic reports; Concluding Observations, of the Committee on the Elimination of Discrimination Against Women: Netherlands*. 31/07/2001. U.N. Doc. A/56/38, paras 185-231, see Chapter 5, footnote 285.

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CA-J, CA-Y.

*of my aunts have forced their daughters into modelling, into queen elections.*"<sup>203</sup> In addition to an emphasis on nudity, that is the hall-mark of this type of entertainment, condemned by a Dutch respondent: *"Not semi-naked - shades of pornography,"*<sup>204</sup> It also compels girls to conform to a particular model of bodily perfection: *"All extremely superficial, exploitative, female beauty; they have to be ultra-slim."*<sup>205</sup>

#### **8.5.4. Assessing perceptions of discrimination**

Generally differential treatment is a result from more than one factor. Social class is perhaps more important on Aruba than in the other societies. Issues of ethnicity are more prominent in the other two States, tending to discrimination in the job market. Gender stereotyping is still common, especially on Aruba where society encourages girls, expected to be submissive and affectionate,<sup>206</sup> to cultivate different habits from boys. Different types of work are assumed to be natural for the two sexes, an attitude also found in the other communities. Different expectations for girls are most pronounced on Aruba, where participation in beauty contests reaches fever pitch with the election of the Carnival queen, reinforcing a view of girls as sex objects.<sup>207</sup>

#### **8.5.5. Motivation as interpreted by adult respondents**

Several respondents mentioned reasons also advanced by young people themselves, such as the recreational value of part-time work and the need for pocket-money, taken for granted in affluent Western societies, such as the Netherlands. This is, however, unusual among immigrant communities,<sup>208</sup> nor customary on Aruba,<sup>209</sup> despite the fact that one needs money in order to afford even the simplest things outside the home. Whilst economic necessity forms an important motivation, there is no clear dividing line between working for oneself and in support of the family, as pointed out by

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<sup>203</sup> AR-E.

<sup>204</sup> NL-Z.

<sup>205</sup> AR-P.

<sup>206</sup> AR-R.

<sup>207</sup> AR-A, AR-B, AR-C, AR-D, AR-E, AR-N, AR-P, AR-W.

<sup>208</sup> NL-F, NL-Q.

<sup>209</sup> AR-D.



respondents in all three societies.<sup>210</sup> Respondents tended to regard teenage work as a way of earning pocket money, but also a form of training, considered beneficial to the extent of having the capacity to transform young people with criminal records into law-abiding citizens. *"We had someone under strict supervision, and then with a contract of work from a local company, things clicked just like that!"*<sup>211</sup>

In some instances respondents drew on past experience of teenage work, for instance, about the satisfaction of having money to spend: *"I made some money, I had some responsibility"*<sup>212</sup> and as a status-enhancing experience: *"status of having their own job, at the same time something of the American idea. If you have your own job, stand on your own feet, pay your own way."*<sup>213</sup>

Peer pressure was regarded an important incentive by respondents in all three societies. *"Keep up with peer-pressure, something in the U.S. that is very prevalent."*<sup>214</sup> Also, the fact that working is fast becoming the norm, is a powerful argument: *My eleven year old twins are already asking whether they can work when they are thirteen,*<sup>215</sup> In addition, two Dutch and two Aruban respondents mentioned ridicule for not wearing the right kind of clothes as clothing constitutes a visible badge of belonging and acts as a powerful social code.<sup>216</sup> *"Children want to participate, to go out, to belong."*<sup>217</sup> Finally the argument comes full-circle, with working regarded as much as a right as the one to be free from exploitative work: *"Children have a right to work, because they need it, it is part of their development."*<sup>218</sup>

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<sup>210</sup> CA-M.

<sup>211</sup> NL-C.

<sup>212</sup> CA-B.

<sup>213</sup> CA-M.

<sup>214</sup> CA-M, AR-B, AR-C, AR-K, AR-T, NL-L.

<sup>215</sup> NL-T, also NL-L.

<sup>216</sup> van Beckhoven, A. P. M. (1990a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*, p. 53.

<sup>217</sup> AR-T, see also the statement one of van Beckhoven's respondents *"You don't belong if you don't work"*; van Beckhoven, A. P. M. (1990a). *Van echt werk ga je zweten: een onderzoek naar de kwalitatieve aspecten van kinder- en jeugdarbeid*, p. 52.

<sup>218</sup> NL-Z, worker for a child rights organisation; echoing the purport of a paper by Nieuwenhuys, O. (1992). 'Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind.' *Tijdschrift voor de Rechten van het Kind*, September 1992, p. 7.

### 8.5.6. Perceptions of the CRC<sup>219</sup>

Nine Californians out of fourteen had never heard of the CRC.<sup>220</sup> From the ones who had, one only regarded the Convention as a standard contributing to the well-being of children.<sup>221</sup> Three respondents were hostile to the idea of ratification: *"I would not want to be told that a child has rights beyond what we as parents, if we could not tell our children when to be in at night, when to make certain decisions."*<sup>222</sup> Another objected: *"I think if there is anything like exploitation or anything where the child is being used for hurts, we have laws that do that [ . . . ] back in the past, when the idea of the conventional rights of the child were nowhere to be found and things worked out OK",* whilst the third saw the CRC as a self-serving scheme of campaigners, pretending to work for the welfare of young people: *"It stretches the ambitions of ill-informed grown-ups."*<sup>223</sup> Two respondents, who first heard of the existence of the CRC during the interview, cautiously welcomed the idea of a children's rights convention: *"ratifying means the U.S. would be held accountable by a world organisation of some sort? That would be helpful."*<sup>224</sup> In contrast all Dutch and seventeen out of twenty-two Aruban respondents were familiar with the CRC, and believed that implementing the provisions of the Convention would benefit young people: *"you then have a standard to observe."*<sup>225</sup> Two Arubans were unfamiliar with the CRC and the attitude of two others was ambivalent.<sup>226</sup>

Seven Dutch respondents questioned called into question to what extent states take implementation seriously: *"only when done in earnest, embedding it in society."*<sup>227</sup> *"Some Third World countries take the CRC more seriously than rich Western ones, who treat it as a 'paper tiger'."* As an example, even in the Netherlands ethnic minority children

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<sup>219</sup> Four Californian and five Dutch respondents interviewed in 1999 were not asked any questions about the CRC.

<sup>220</sup> CA-A, CA-B, CA-E, CA-H, CA-I, CA-P, CA-Q, CA-R, CA-X, AR-E, AR-F.

<sup>221</sup> A similar ratio of respondents in favour as in the questionnaires - five out of seventy-eight respondents, section 8.3.6.

<sup>222</sup> CA-K.

<sup>223</sup> CA-Y.

<sup>224</sup> CA-R.

<sup>225</sup> AR-R.

<sup>226</sup> AR-F, AR-P.

<sup>227</sup> NL-R.

still manage to drop through the mazes of the education system: *"I have clients, whose children do not go to school,"*<sup>228</sup> - despite the right to education stressed in Art. 28 of the CRC. All the Aruban respondents, except the four individuals mentioned earlier, were in favour of accepting the Convention, citing the ability to argue more effectively for compulsory education as a powerful incentive: *"for parents to prevent child labour, and if compulsory education was introduced on Aruba, that would be a reason in itself."*<sup>229</sup>

### **8.6. To conclude**

Most definitions of child labour fall short. Many respondents defined the term 'child labour' in terms of age, others felt, that all young people who miss out on chances of a better life in the future, because of perceived needs in the present, are victims of pressure to start working too early. According to a number of respondents work by young people over sixteen could under such circumstances be designated as 'child labour'. Elements such as coercion, lack of choice and the loss of educational opportunity which were mentioned by several respondents are perhaps more significant than 'low age' on its own. It is sometimes assumed that payment is central to the idea of work, and despite awareness of practices that take advantage of young people without any remuneration, these are not classified as 'child labour' because no money is involved.<sup>230</sup> Only when put into context, is it possible to assess child work in its full perspective. The more neutral term 'child work' has been used here on purpose, as there is too much confusion because of the imprecise nature of the terminology which tends to be used.<sup>231</sup> Child labour has connotations of low age and exploitation<sup>232</sup> as well as of kinds of work that ought not to be requested from a young child, lacking the defences of an older and more experienced worker. In the case of teenagers of, say sixteen or seventeen, the term 'child labour' is inappropriate, although they may be

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<sup>228</sup> NL-T.

<sup>229</sup> AR-Y, AR-U, Compulsory education had not yet been implemented on 31/12/2002, see Chapter 3, footnote 69.

<sup>230</sup> AR-U, AR-Y

<sup>231</sup> See, for instance Chapter 1, Section 1.3.

equally exploited by unscrupulous employers or uncaring relatives. Unlike older workers, many of whom are able to rely on the support of a trade union, teenage workers are more vulnerable, in particular when working illegally. As long as age discrimination is still tolerated,<sup>233</sup> their age alone marks them as inferior, low status labour, regardless of the quality of their work, whilst they tend to have no information of labour standards or of their right to complain of exploitative treatment.

In all three jurisdictions respondents were aware, that children may work because of economic necessity. This is especially true in California, where poverty and inequality are much more visible than in the other states, despite the fact that several Dutch respondents made comments on the differential treatment meted out to young people of ethnic background. For some young people, working is making the best of a difficult situation. If a young person's family needs help and there is no alternative, the child helps as a matter of course. Young people may take pride in doing so, whilst possibly feeling somewhat resentful at the same time, judging from the response of one child: "*Paying parents' debts.*" Reactions, such as these, indicate that parents may make use of children in potentially exploitative ways without realising the fact. For instance, children, whose labour is rated as 'helping', may be exploited as unpaid servants, looking after siblings or doing housework without receiving much in the way of appreciation. Another group achieves recognition through celebrity status – actor, beauty queen or footballer, but may miss out on contact with peers and school life. In some cases their efforts are not even rated as work.

Few respondents were able to conceive of prostitution as anything resembling work, in particular in connection with young people under eighteen. The notion of behaviour so far removed from the ideal of childhood, as 'time, reserved for play and

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<sup>232</sup> See Chapter 1, Section 1.1.

<sup>233</sup> Young people may be excluded from certain activities due to stereotyped views of their habits, van Berkel, E., M. Cornelissen, *et al* (2002), *Leeftijd en Arbeid: De OR aan zet bij inzet van alle leeftijden*, Utrecht, LBL, expertisecentrum leeftijd en maatschappij, p. 15, in

'free from care, to be guarded from being invaded by anything unpleasant or serious', was shocking to a number of respondents, who saw juvenile prostitution as its denial.<sup>234</sup> Several respondents recognised, that children were pushed into the practice by circumstances, staying in prostitution because of misplaced loyalty or because they felt they were not fit for anything else. Although respondents CA-I and CA-B, referring to teenagers, who sold themselves "to make some money," gave no indication whether these young people did so out of desperation or a craving for consumer goods, the interview with CA-E confirmed the importance of push-pull factors.<sup>235</sup>

A number of respondents used the term 'childhood' in the sense of 'time of preparation' for adulthood, emphasising the importance of education required in order to qualify for a satisfying career, instead of seeing education as one of three aspects regarded essential for the development of social competence and independence.<sup>236</sup> In consequence recreation has, in contrast to play, also come to be treated as a serious concern: the majority of respondents were in favour of organised and supervised leisure activities such as sports.<sup>237</sup> Such a preference may be related to a perception, that young people are at risk, if left unsupervised. In contrast the value of leisure as a time free from both schooling and employment, was mentioned by Dutch respondents only. This may be a reflection on the fact that 'the right to rest and leisure',<sup>238</sup> represents a standard of a Convention, which had not yet been ratified by either of the two other States, when the interviews were conducted.

In general knowledge of regulations is very poor. People are even less aware of the rationale for some of these rules, especially where no explanation for restrictions

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connection with the adoption of EU Directive 2000/78/EC (Framework Directive for Equal Treatment in Employment and Occupation).

<sup>234</sup> CA-E, also CA-B; CA-S and AR-T, see Chapter 2, Section 2.3.1.2.

<sup>235</sup> See Chapter 2, Section 2.5.1.3.

<sup>236</sup> Raad voor het Jeugdbeleid (1995). *Sociaal talent in zicht: een advies over de bevordering van maatschappelijke zelfstandigheid van jongens en meisjes*. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 9. See Chapter 2, section 2.3.1.2.

<sup>237</sup> AR-B.

<sup>238</sup> Subject of Art. 31 of the CRC, see Chapter 5, Section 5.4.3.2.

has been provided. If there are many exceptions such as these, keeping track of what is permitted and what is not, becomes problematic. Dutch respondents were more convinced than their Californian counterparts about the need of teenagers for a good night's sleep, which came out in their response. Despite the fact that Aruba is a part of the Kingdom of the Netherlands, little seems to have changed since the 1950's: children under fourteen are not allowed to work, therefore people assume that child work does not occur, unless perhaps involving immigrant children debarred from attending school. In any case legal responses are inadequate as long as the public, children, parents and employers included, are insufficiently persuaded of the need to strike a balance between working hours and leisure time.

Ideas about children's motivation to make the effort to work instead of using their free time in recreational activities varied from economic pressure because of family circumstances to views of work as recreation. The independence brought by having a certain amount of money at one's disposal, and conversely the handicap of not having anything to spend, was mentioned by several subjects.<sup>239</sup> According to subjects in all three jurisdictions peer pressure is an important factor. Undoubtedly other reasons, although not mentioned explicitly, such as pride in helping one's family in a difficult situation, also play a role. Overall, there was a decided contrast between the views of a number of the adult respondents and the young people themselves. Many adults preferred to see children engage in unpaid voluntary work,<sup>240</sup> which would continue to keep them dependent on parental allowances. The young people, on the other hand, saw nothing wrong with converting their labour into cash,<sup>241</sup> to be spent in accordance with their own priorities.

Comparison of the responses from the three groups provides a more complete picture of factors, that motivate children to spend their time working rather than in

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<sup>239</sup> CA-M, NL-Q.  
<sup>240</sup> Section 8.3.4.2.  
<sup>241</sup> Section 8.2.1.5.

leisure pursuits, whilst giving insights in the societies in which their activities are located. For many young people taking part in the adult world of work is tantamount to leisure. Working is a way to independence and gives them status, they are part of the 'in' set, able to afford the symbols of the good life as presented by the world of advertising without having to economise.

Expectations of the CRC's potential to benefit children were different in the three societies. Very few Californians were aware of the existence of the CRC, and a number of respondents were openly hostile to the idea of ratifying the *Convention*. Most Californian subjects were more interested in protective measures and the more conventional provision of care and services, whilst the importance of children as holders of rights came to the fore in interviews with both Dutch and Aruban respondents.

"... there isn't a chance in the world you'll notice when they have something to teach you."  
Orson Scott Card, 'Speaker for the Dead', 1986

## 9. Conclusions and Suggestions

### 9.1. Unequal relationships

In an area of law, which aims at the protection of young people under eighteen, one has to be aware, that both their age and the nature of protection serve to place them in an unequal position. Being a child conjures up an image of someone unfinished, on the way to being human, but not quite there yet. Being in need of protection conjures up an image of vulnerability.

The social construct of children as helpless beings goes back to the beginnings of the labour legislation. The two main 'States' in the comparison first passed labour legislation to protect working children, which was extended shortly afterwards to include women workers. As both were regarded helpless and incompetent, the sanctity of the work contract was not under threat.<sup>1</sup> However, the adoption of legislation concerned with the safety and protection of all adult workers, marked a separation between child labour law and labour legislation relating to adults, despite the retention of protective measures for women. The dichotomy between the two types of labour legislation has proved pervasive, the one aiming at the formulation of standards of safety at work and entitlements achieved by collective bargaining, the other at the protection of the weak and vulnerable, largely by exclusion from the world of work, and dependent on considerate treatment. This division is based on the view, that experience is a function of age, and that school attendance in itself instils a sense of responsibility.

The language of International Instruments, such as the expressions, 'the right to be 'protected from economic/sexual exploitation' and 'not likely to be harmful to their health or development' emphasises the expectation, that children allowed to be part of



the world of adults are destined to become victims. Yet, there is no reason, why workplace standards applicable to workers above the age of eighteen should not be applicable to younger people, whether working full-time or part-time while still attending school, on the understanding that additional measures may be needed. Undoubtedly certain tasks pose risks to inexperienced workers, who are still in their growth, and may require tools and/or furniture suitable to their size. Instead workplace entitlements as well as safety and security measures applicable to adult employees appear to be in a different category from those considered suitable for young people according to general International Legal Instruments concerned with child work.<sup>2</sup> Only the regional EU *Directive 94/33/EC* lists a number of specific workplace conditions.<sup>3</sup>

The division between what is thought appropriate for adults and what for children has been emphasised by the language used in International Legal Instruments from the earliest UN Conventions onwards. Although not stated explicitly, the term 'everyone' from the *UDHR* subtly changes from encompassing 'every human' into being reserved for adult human beings. The phrase 'everyone has the right to work and to free choice of employment' clearly has not been framed with children and young people in mind. Instead the *UDHR* uses a construction of children as dependants entitled to 'special care and assistance', reaffirmed in the *ICESCR*.<sup>4</sup> The *UDHR* and the *International Covenants* give expression to an ideology, which unites two images, the one, of a nuclear family consisting of a male breadwinner, a female carer and one or more dependent children, and the other, a conception of childhood as a time devoid

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<sup>1</sup> 1889 amendments to the child labour laws, in both 'States', Chapter 6, footnotes 33 and 65.

<sup>2</sup> Expressed rather vaguely as 'appropriate regulation of the hours and conditions of employment', *CRC*, Art. 32, compare the equally imprecise recommendation in Art. 12(1) of the non-binding *ILO Minimum Age Recommendation*: 'Measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. These conditions should be supervised closely', whilst the *Minimum Age Convention* ignores workplace conditions altogether.

<sup>3</sup> E.g. Art. 2(a), 'the fitting out and layout of the workplace and the workstation'.

<sup>4</sup> Chapter 5, footnotes 31 and 91.

of care.<sup>5</sup> Both have dominated Western thinking since the mid-nineteenth century and both are at variance with the proposition that children might care to engage in work.

Yet the *ICESCR* devotes a separate article to standards concerned with children in work situations,<sup>6</sup> recognising that children may in some circumstances have to engage in economic activities. However, instead of using the phrase 'safe and healthy working conditions', as applicable to all categories of workers, children are singled out for protection from 'employment in work harmful to their morals or health or dangerous to life'. The wording suggests, firstly, that 'harm to health and danger to life' differs in dimension from 'unsafe and unhealthy working conditions', and secondly, that the morals of adults are not in need of protection, because adults can choose their own moral standards, which children cannot.

The call for the protection of children is based on the view, that children are not only more vulnerable, but also different in nature. According to the expression: 'children are radically different',<sup>7</sup> they are not quite human. They may be regarded as irrational,<sup>8</sup> apt to throw themselves into danger at the slightest opportunity, whilst simply asking to be exploited. There is a vestige of truth in the latter proposition: not only is it easier to dominate and exploit persons, who are both inexperienced and smaller in size, the socialisation process of schooling and other institutions, which aims at the standardisation of beliefs, reinforces traditional power relations. In consequence children may put their trust in employers taking advantage of their naivety in cases, where more experienced workers would be mistrustful.<sup>9</sup> In addition, adult workers are able to have recourse to the terms of a contract of labour. Children ultimately depend on the goodwill of employers and others in positions of authority for fair treatment,

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<sup>5</sup> Chapter 2, footnote 79.

<sup>6</sup> Art. 10(3): 'children and young persons should be protected from economic and social exploitation'.

<sup>7</sup> Chapter 2, section 2.3.1.2.

<sup>8</sup> See Archard, D. (1993b). *Children: rights and childhood*. London; New York, Routledge, pp. 51-57.

<sup>9</sup> See Chapter 2, section 2.8.

such as remuneration representing equal value for equal work and adequate rest periods, rights that adult workers in the First world have long since acquired by means of collective bargaining. Instead of an enforceable 'right to just and favourable conditions at work', children may hope to meet with considerate treatment.<sup>10</sup>

## 9.2. Dependence on considerate treatment

If activities are unregulated, considerate treatment is all young people can expect. There is no escaping the fact, that a number of demanding activities, in which young people may engage, remain outside the protection of the law, because they are unpaid. Despite the regulation of the conditions of work for the entertainment sector in both California and the Netherlands, there is no control over grey areas, such as participation in competitive sports<sup>11</sup> and beauty contests. The latter, extolled as fun and leisure and fuelled by parental pride,<sup>12</sup> additionally results in the construction of girls as sex objects. Although popular in the U.S. as well, the practice of parading scantily clad girls in front of enthusiastic audiences has become entrenched in Aruban society, serving as a boost to the tourist industry. As mentioned in Chapter 8, several Aruban respondents, in particular social workers and teachers active in combating sexual abuse, expressed deep unease over the practice.<sup>13</sup>

Other groups of young people on Aruba fall victim to the need of families for childcare. As long as education is not compulsory, children can be kept home from school for use as unpaid servants or carers,<sup>14</sup> thereby losing out on schooling or contact with peers. Similar practices are also known in the Netherlands, where girls from ethnic minorities may be removed from education by their parents to do

<sup>10</sup> A reminder of the proposition to rely on the 'obligation by adults to be kind and considerate to children.' O'Neill, O. (1992). 'Children's Rights and Children's Lives'. *Children's rights: a re-appraisal in the light of the United Nations Convention on the Rights of the Child in International Journal of Law and the Family*, 8(1), P. Alston, et al., Oxford, Oxford University Press. pp. 24-41, discussed in Chapter 4, section 4.7.

<sup>11</sup> Chapter 7, section 7.3.2.1., 'Work permitted to children below the age of entry into labour.'

<sup>12</sup> Chapter 8, sections 8.5.3. and 8.5.4.

<sup>13</sup> Compare also the warning by NL-Z "not semi-naked - shades of pornography" in Chapter 8, section 8.5.3.

housework at the first possible opportunity.<sup>15</sup> However, young people must remain at school until 16, because of the compulsory character of the Dutch education law, i.e. for at least two years longer than on Aruba. Other children such as those living and working in the street are not covered by the Dutch labour law, according to the CEACR,<sup>16</sup> due to a definition of work in the *Working Times Act*<sup>17</sup> contrary to the terms of the *Minimum Age Convention*.<sup>18</sup> In reality, many of the activities of street children in a West European context are covered by the Criminal Code rather than labour law, whether the young people in question are treated as victims or perpetrators. However, as mentioned in Chapters 6 and 7, there are other children and young people, who are unable to have recourse to the Law, namely undocumented immigrant children,<sup>19</sup> who in many cases suffer discrimination and dire poverty because of their status.

It is not by chance, that the predicament of these young people remains unregulated. Both gender and race have been identified as contributing to inequality in a world built around the standards of the white, male adult.<sup>20</sup> Despite awareness that gender issues tend to be neglected in legal debates, although it has been recognised, that gender deserves special attention,<sup>21</sup> for instance, in the *Worst Forms of Child Labour Recommendation*, it is as though Law is unable to recognise, that inequality may have multiple dimensions. As a result many young people remain dependent on considerate treatment.

<sup>14</sup> Chapter 8, section 8.5.2.

<sup>15</sup> See Chapter 8, Section 8.5.3.

<sup>16</sup> The ILO Committee of Experts, see glossary.

<sup>17</sup> As 'activities within the terms of an agreement', Chapter 7, section 7.3.2.3., The Netherlands.

<sup>18</sup> Discussed in Chapter 5, section 5.5.1.2.

<sup>19</sup> Chapter 6, sections 6.4.1.1-6.4.1.3.; Chapter 7, footnote 254; Chapter 8, section 8.5.2.

<sup>20</sup> Chapter 2, section 2.5.1.1.

<sup>21</sup> Chapter 3, section 3.5.3.1. *Worst Forms of Child Labour Convention*, Arts. 7(2)(e), and *Worst Forms of Child Labour Recommendation*, 2(c)(I-III), see Chapter 5, footnote 168.

### 9.3. Under the protection of the Law

As indicated in Chapter 5,<sup>22</sup> all three 'States' are Parties to a number of International Instruments, which are relevant to child labour issues, concerned both with the regulation of acceptable work and the control of its exploitative forms. National legislation tends, like International Conventions aimed at children, to focus on protection from 'harm', rather than to emphasise the 'rights at work of all those who work', as posited by the ILO for adults.<sup>23</sup>

The Kingdom of the Netherlands, including Aruba, is a State Party to the ILO *Labour Inspection Convention*, the ILO *Minimum Age Convention* and the *CRC* - although Aruba was not ready to accept the *CRC* until 2001. Comments and observations from both the Committee on the Rights of the Child and the ILO Committee of Experts provide an indication of the progress of implementation in the Netherlands and on Aruba, or on occasion the lack of progress.

The U.S. has ratified both the *Worst Forms of Child Labour Convention* and the two *Optional Protocols* to the *CRC*, the provisions of which are therefore also applicable to California. The country became a State Party to the latter without ratifying the *CRC* itself, in the expectation that ratification does not entail any domestic obligations, arguing that both Federal and State provisions were already in conformity with standards posed by these Instruments.<sup>24</sup> Yet the action of becoming a State Party to the Protocols entails the obligation to report progress towards the implementation of the provisions in accordance with the general principles of the *CRC*,<sup>25</sup> as if the State Party had ratified the Parent Instrument.

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<sup>22</sup> Sections 5.4.2., 5.4.3.1. and 5.4.7.

<sup>23</sup> ILO (1999). *Decent Work; Report of the Director-General, 87th Session*. Geneva.  
[http://www.ilo.org/public/english/standards/reim/ilc/ilc87/rep-i.htm#Human\\_rights\\_and\\_work](http://www.ilo.org/public/english/standards/reim/ilc/ilc87/rep-i.htm#Human_rights_and_work), p. 4.

<sup>24</sup> Chapter 5, footnotes 191 and 230.

<sup>25</sup> Arts. 2, 3, 6 and 12, see Chapter 4, section 4.8.

According to the completed questionnaires and the interviews with professionals working with children and young people reported in Chapter 8,<sup>26</sup> few Californians are familiar with the standards of behaviour towards children and young people advocated in the *CRC*. Rather than generating interest in the purport of the *Convention*, the idea of ratification of the Convention has raised a great deal of hostility, partly due to the perception, that adoption of the *CRC* constitutes a threat to the authority of the family over children. Accession to the ILO's *Worst Forms of Labour Convention*, on the other hand, has been welcomed by organisations combating oppressive child labour in the U.S. However, as pointed out in Chapter 5, the first U.S. report to the ILO on the *Worst Forms of Child Labour Convention*, focuses on legislation rather than practice.<sup>27</sup>

Comparing the impact of the international human rights regime on the three 'States' in the comparison, it is fair to say, that in California the right of children to freedom from economic and sexual exploitation is regarded as a question of protection from harm, rather than a human rights issue. To many Arubans the adoption of the *CRC* represents an important argument for the introduction of comprehensive compulsory education, not in the least to the benefit of the many undocumented children, who have long been denied a chance of education. Yet the Aruban Government has paid little attention to earlier recommendations concerning compulsory education and child labour from other Treaty bodies, such as the Committee of the *ICESCR* and the ILO *CEACR*.<sup>28</sup>

In the case of the Netherlands ratification of International Instruments has not raised any controversies in relation to the area of child work. The fact, that it took so long for the Netherlands to become a State Party to the *CRC* was due to the intention to make a number of controversial reservations, which led to prolonged debates.<sup>29</sup> As regards the regulation of child labour, neither EU Directive 94/33/EC 'on the protection

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<sup>26</sup> Chapter 8, sections 8.3.6. and 8.5.6.

<sup>27</sup> Chapter 5, section 5.5.1.1.

<sup>28</sup> Chapter 5, footnotes 287 to 293.

of young people at work',<sup>30</sup> nor the ratification of the *CRC*, can be said to form the direct occasion for Dutch child labour law reform, initiated well before the adoption of these Instruments. Instead the impetus sprang from the realisation, that the *Labour Act* 1919 would not be able to cope with the demands of the twenty-first century.<sup>31</sup>

The Government's commentary in the Explanatory Memorandum to the Bill for the Ratification of the *CRC* clearly indicates that its youth policy was regarded as being in conformity with the *Convention*.<sup>32</sup> Many of the ideas behind the new labour legislation were based on advice from the Council for Youth Policy, grounded on the principle of the 'promotion of equal treatment of young people and adults', in conjunction with 'the creation of conditions facilitating growth towards independence'.<sup>33</sup> Although no reference was made to the *CRC*,<sup>34</sup> there is a strong affinity with the principles behind the *Convention*.

#### 9.4. Three interconnected spheres: 'work - education - leisure'

The importance of three important aspects of a young person's life has been discussed in Chapter 5. The rights to education and leisure form part of the *CRC*'s array of rights. The third, the right to work, has been acknowledged as a right owed to everyone from the Universal Declaration onward, that is to say, to every adult. The

<sup>29</sup> Chapter 7, section 7.1.

<sup>30</sup> It is clear from the Transposal Report of *Directive* 94/33/EC, that the Dutch legislation has not been formulated with the *Directive* in mind. Several Articles have no counterpart in the *NRK*, for instance, sports is not mentioned, nor are there any provisions to prevent children working longer than the permitted period by being employed by several employers at the same time. Commission of the European Union, *Transposal of Directive 33/94/EC Concerning the Protection of Young People in the 15 Member States of the European Union*. European Union. [http://europa.eu.int/comm/employment\\_social/social\\_dial/labour/3394\\_en.pdf](http://europa.eu.int/comm/employment_social/social_dial/labour/3394_en.pdf), see Chapter 5, section 5.5.1.2. *The Netherlands*.

<sup>31</sup> Chapter 7, section 7.2.2.

<sup>32</sup> Chapter 5, section 5.5.1.2. *Netherlands*; Chapter 7, section 7.1.

<sup>33</sup> Raad voor het Jeugdbeleid (1988). *Jeugd met Recht: een perspectief voor de rechtspositie van minderjarigen*; 39. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 59, see Chapter 7, section 7.1.

<sup>34</sup> Raad voor het Jeugdbeleid (1990a). *Jong geleerd oud gedaan? : een advies over de positie van kinderen en jeugdigen in de nieuwe arbeidstijdenwet*. Rijswijk, Raad voor het Jeugdbeleid, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 17; Raad voor het Jeugdbeleid (1990b). *Komt tijd, komt raad: een commentaar op de nota 'Nadere uitwerking van de Jongerenparagraaf uit de Hoofddlijnnnota' Arbeidstijdenwet; Nr 266-85/1546K*.

right to engage in paid work has in addition been claimed as a right of children, 'because it forms part of their development'.<sup>35</sup> The explanatory memorandum to the Bill for Ratification of the *CRC*<sup>36</sup> stressed the importance of rest and leisure in conjunction with the right to education and the economic activities of children. In addition, a recommendation from the Council for Youth Policy,<sup>37</sup> dating from the same year as the adoption of the child labour legislation, served to draw attention to the interconnected nature of three spheres, home, education/work and rest/leisure as forming the main framework for child development.

In accordance with the Council's principle of 'the creation and promotion of conditions facilitating growth towards independence', education, linked and equated with work, constitutes a source of social competence through participation. In contrast with the views of the majority of respondents in the present research,<sup>38</sup> the value of education should not be interpreted narrowly as paving the way for a successful career. On the contrary, despite its orientation towards the future, the main role of education is regarded as facilitating conditions for personal growth,<sup>39</sup> rather than as a process of knowledge transfer or socialisation aimed at the completion of a not-yet-

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Rijswijk, Raad voor het Jeugdbeleid, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 5.

<sup>35</sup> Interview respondent NL-Z, see Chapter 8, Section 8.5.5., see also Nieuwenhuys, who draws attention to the fact, that many children are opposed to the abolition of child labour, in the expectation of being relegated to a mode of life where they may well anticipate failure. Some young people also regard school attendance as 'unpaid labour'.

Nieuwenhuys, O. (1992). 'Het Recht om te werken; het Werk van Kinderen en Rechten van het Kind.' *Tijdschrift voor de Rechten van het Kind*, September 1992, pp. 8-7.

<sup>36</sup> *Memorie van toelichting, Rijkswet to goedkeuring van het op 20 november 1989 te New York tot stand gekomen Verdrag inzake de rechten van het kind*, Tweede Kamer, vergaderjaar 1992-1993, 22 855 (R1451), discussed in Chapter 5, section 5.5.1.2.

<sup>37</sup> Explanatory Memorandum to the *Goedkeuringswet Verdrag inzake de Rechten van het Kind*, 24-11-1994, pp. 42-43; Raad voor het Jeugdbeleid (1995). *Sociaal talent in zicht: een advies over de bevordering van maatschappelijke zelfstandigheid van jongens en meisjes*. Rijswijk, Ministerie van Welzijn, Volksgezondheid en Cultuur, p. 28, see Chapter 7, section 7.1.

<sup>38</sup> Chapter 8, footnote 71.

<sup>39</sup> Eimers, T. and B. Hövels (1994). 'Jongeren moeten leren voor het leven, niet alleen voor werk.' *Jeugd en Samenleving* (7/8), July/August 1994, pp. 435-443 in relation to the value of a 'starting qualification' for life-long learning, Chapter 2, section 2.3.1.2.



adult being.<sup>40</sup> Also, according to the Council's view, the rest/leisure sphere marks the right not to strive towards specific, established goals, which is therefore oriented to the present. Like their Californian counterparts, many Dutch respondents thought, that young people should be able to spend time after school equally between educational activities, work and leisure.<sup>41</sup>

As regards leisure, the majority of the adults interpreted the term 'leisure' in the sense of organised activities, such as sports, where young people would not be left to their own devices, as though lack of supervision might constitute a risk.<sup>42</sup> The fact, that only a few respondents<sup>43</sup> stressed the value of rest/leisure as a time free from pressure of both work and schooling, suggests that unstructured free time is not generally regarded important. In addition, the impression, that the rest/leisure aspect of legislation is not always given a high priority, is confirmed by the fact, that the entitlement of working children to daytime rest periods, has been omitted from a Californian child labour digest<sup>44</sup> designed to simplify a complicated subject. However, the fact that approximately half of child respondents considered work enjoyable,<sup>45</sup> suggests, that children did not perceive all types of work as equally demanding, whilst illustrating the porosity of the boundaries between the different domains.

### 9.5 The three spheres: 'work, education, rest/leisure' in comparative perspective

As one might expect, the fact that education is compulsory until eighteen in California and part compulsory until seventeen in the Netherlands<sup>46</sup> determines the pattern of young people's working days. Yet, according to the Californian Labor Code sixteen and seventeen-year-olds can legally work full time, if in possession of a

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<sup>40</sup> Chapter 2, footnote 37. Compare the role of education as seen by questionnaire respondents, Chapter 8, section 8.3.5.1.

<sup>41</sup> Chapter 8, section 8.3.4.1. 'The relative importance of education, leisure and work'.

<sup>42</sup> See Chapter 2, section 2.3.1.2.

<sup>43</sup> Chapter 8, section 8.6.

<sup>44</sup> State of California

<sup>45</sup> Chapter 8, section 8.2.1.5.

<sup>46</sup> Chapter 2, footnote 41.

## Conclusions

certificate of proficiency issued to young people wishing to leave school at sixteen,<sup>47</sup> generally, because they are too far behind with the credits needed for High School graduation. Although declared equivalent to a High School diploma, someone with no more than a certificate of proficiency is in practice regarded as unemployable.<sup>48</sup> The fact that many young people are allowed to leave school without any practical qualifications appears to give a seal of approval to what amounts to a failure of the education system.

Young people are let down by the education system in the two other 'States' as well. Although education is part compulsory in the Netherlands until seventeen, some young people, from the ethnic communities in particular, may miss out on schooling, because they have been omitted from the records of the education authorities, due to lack of co-ordination between the various services involved.<sup>49</sup> On Aruba, the majority of native Aruban children was reported to attend school until sixteen,<sup>50</sup> despite the lack of compulsory education and the legal age of entry into labour of fourteen.<sup>51</sup> However, according to a 1999 report, over 1200 school-age children did not attend school.<sup>52</sup> As undocumented immigrant children have been left out of the statistics, this figure refers to Aruban children. Therefore it is not clear, whether the many children reported by the Aruban Teachers' Union to be working during school hours in the supermarkets,<sup>53</sup> were native Aruban or immigrant children unable to attend school.<sup>54</sup>

In both California and the Netherlands a number of provisions enable children between twelve and sixteen to engage in part-time work. According to the Californian

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<sup>47</sup> Pupils leaving school, with a certificate of proficiency 'in basic skills' taught in public high schools, see Chapter 7, Table 7.3.

<sup>48</sup> See Chapter 8, Section 8.3.5.1.

<sup>49</sup> Chapter 8, section 8.5.8.

<sup>50</sup> Chapter 8, section 8.5.2.1. *Poverty-related child work*, also footnote 149.

<sup>51</sup> Compare, however, the concern over the high rate of school dropouts, Committee on Economic - Social and Cultural Rights (1998). *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant ; Concluding observations of the Committee*; E/C.12/1/Add.25. Geneva, United Nations, § 37, Chapter 5, footnote 280.

<sup>52</sup> Chapter 8, footnote 157.

<sup>53</sup> Repeated submissions to the ILO Committee of Experts, Chapter 5, footnote 288.

Labour Inspectorate exemptions have been introduced to enable young people to "provide young people with work experience and income."<sup>55</sup> However, some of these exemptions make a mockery of the protective aspects of child labour legislation. For instance, the permission to young people from twelve upward to engage in agricultural work,<sup>56</sup> is known to expose young people to unacceptable health hazards.<sup>57</sup> In addition, caring activities, such as baby-sitting and household work, are not subject to any age limitations at all, despite the responsibility involved in looking after another human being.

The fact, that permission to children as young as thirteen to engage in part-time work in the Netherlands, is combined with serious attempts at enforcement, gives greater credibility to the claim, that work at such a young age is in their interest. The only exception to the lower age limit concerns work within the framework of a task punishment under strict supervision, as set out in Chapter 7.<sup>58</sup> In contrast to the Californian total exemption for household work and babysitting, the lower age limit of thirteen applies to all non-industrial work, including babysitting.<sup>59</sup> Although effective control of casual work for family and friends is impossible, the lower age limit serves as a sign, that the responsibility of looking after another human being, may be too great for very young children.

However, a principle of protection applies to children of that age in the Netherlands as well. For example, rest periods for young employees are more frequent and last longer than the ones applicable to other workers.<sup>60</sup> In addition, only part of the

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<sup>54</sup> Confirmed by respondent AR-E, who claimed, that children sometimes stop going to school for financial reasons, section 8.5.2.1.

<sup>55</sup> Chapter 7, section 7.2.

<sup>56</sup> Chapter 7, section 7.3.2.1.

<sup>57</sup> Chapter 2, footnotes 208 and 209, see Human Rights Watch, Ed. Lee Tucker (2000). *Fingers to the Bone: United States Failure to Protect Child Farmworkers*, Human Rights Watch <http://www.hrw.org/reports/2000/frmwkr/>, also the submission by the International Confederation of Free Trade Unions to the ILO, see Chapter 5, section 5.5.1.1. *United States*.

<sup>58</sup> Chapter 7, section 7.3.2.1.

<sup>59</sup> Chapter 7, footnote 246.

<sup>60</sup> Chapter 7, Table 7.1.

school vacation may be used for work, a provision accepted by most Dutch respondents as beneficial for children, whilst regarded unnecessary by Californians.<sup>61</sup>

Despite Aruba's relative prosperity, the age of entry into labour has not been raised from the initial age of fourteen, the lowest possible age limit permitted under the ILO *Minimum Age Convention*.<sup>62</sup> Otherwise Aruban children under fourteen are only allowed to work in a family context, when they count as full-time workers, despite certain restrictions, such as a prohibition to work at night or in occupations regarded as hazardous.<sup>63</sup> On Aruba adolescents of fourteen and over are entitled to a daytime rest period after five hours of work, in other words, a lunchbreak.<sup>64</sup>

In all three 'States' juvenile prostitution is regarded as an issue of exploitation rather than as work: children are victims according to the *Optional Protocol on the Sale of Children*. Several respondents thought a young person was still too immature at the age of eighteen to be able to take a decision to use her or his body in this way. As argued by experts working with child prostitutes, young people tend to be pushed into the practice by external factors, such as sexual abuse in early childhood, drug addiction or seduction.<sup>65</sup> Whilst the Law now provides for the possibility to prosecute pimps and procurers of young people under the age of eighteen, the deterrent effect has not managed to eradicate the practice.<sup>66</sup> As to the rehabilitation of child prostitutes, young people are still dependent on considerate treatment by voluntary organisations, which are largely funded by charity.

<sup>61</sup> Chapter 8, section 8.3.2.3.

<sup>62</sup> Apparently the ILO is unaware of Aruba's prosperity. However the Aruba's reliance on tourism makes the State a hostage to fortune.

<sup>63</sup> Chapter 7, Table 7.3. However, according to the CEARC, the commitment: 'as will be defined by national resolution', WRO 17/1 has not materialised since the adoption of the 1952 ordinance, CEACR (1999-2002). *Comments made by the Committee of Experts on the Application of Conventions and Recommendations, to reports to the Minimum Age Convention 1973 (Aruba)*. Geneva, <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

<sup>64</sup> Chapter 7, Table 7.1.

<sup>65</sup> Chapter 8, section 8.5.2.2.

<sup>66</sup> Chapter 7, section 7.3.2.2.

### 9.6. Enforcement in theory and practice

As recognised already at the time of the beginnings of child labour legislation, effective and regular enforcement procedures are indispensable if such legislation is to be at all meaningful. Although it is not feasible to police all places of work, a vigorous enforcement policy gives a signal that lack of compliance with the regulations will not be tolerated, whilst such a policy can also have a powerful educational effect. Judging from the response to the questionnaires, knowledge of child labour legislation on its own is inadequate to guarantee compliance with the child labour provisions, whether among children or adults, both in California and the Netherlands.<sup>67</sup> People, including employers and children, are either ignorant of the provisions or show little interest unless violations are seen to endanger young workers. Yet Californian young people appeared to be better informed than the other children or adults. Nevertheless, violations of the current child labour provisions are common in both 'States'.<sup>68</sup> The 1990s amendments to the Californian child labour law arose from a concern over infringements of the existing provisions, which gave rise to serious accidents to young working people. However, the fact that the amendments provide for higher levels of fines, does not imply that these are also levied in practice. Fines are still too low to have a deterrent effect on businesses,<sup>69</sup> whilst labour violations are not targeted specifically by an under-resourced Department of Labor Enforcement. The fact, that the creation of a proposed Resource Center on Safe Jobs for Youth intended to coordinate various involved agencies, was abandoned as too expensive, suggests, that the regulation of child work has a low priority. In contrast, the Netherlands Ministry of SZW has been taking the enforcement of the new provisions seriously, not least with the view of educating the public. Although inspection of more than a fraction of all businesses is impracticable, annual child labour sweeps are conducted involving a

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<sup>67</sup> Chapter 8, section 8.3.2.

<sup>68</sup> Chapter 7, section 7.4.1.1.

<sup>69</sup> Chapter 7, section 7.4.1.1.

quarter of the inspectorate, i.e. equal to the entire Californian Department of Labor Standards Enforcement, whilst targeting fewer businesses.<sup>70</sup> In addition, inspections are publicised as widely as possible and the results presented officially to Parliament in order to generate further publicity. As in California, child labour violations are not targeted by the Aruban labour inspectorate, which acts on the presumption, that child labour involving Aruban children does not take place, whilst the undocumented status of many immigrant children renders them invisible to the labour inspectorate.<sup>71</sup>

### 9.7. Child labour and the creation of valid law

As indicated in Chapter 8, a child respondent posed a counter-question: "Why not?"<sup>72</sup> to question 14 of the youth questionnaire "Why did you start working?" This section is an attempt to provide a response, arguing that child labour law can under certain circumstances be seen to be reasonable as well as based on valid grounds.

According to Habermas's discourse theory the validity and legitimacy of law is a function of the assent of all persons involved, provided they are capable of regarding themselves as authors of the law applicable to them as well as its addressees. To make that possible, citizens, who regard each other as equals, need to act with one accord.

In this respect the first question is to what extent young people have been recognised as equals. Formal equality of young people proceeds either from the *CRC*'s non-discrimination principle, or from basic rights enshrined in a State's Constitution. In connection with children and young people formal equality is inadequate, as long as they are regarded as not yet quite human, as different,<sup>73</sup> and are in an unequal power relation compared to adult citizens.

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<sup>70</sup> Chapter 7, table 7.4.

<sup>71</sup> Chapter 7, section 7.4.1.2.

<sup>72</sup> Section 8.2.1.5.

<sup>73</sup> Chapter 2, section 2.3.1.2.

The second question is to what extent Habermas's other criteria for the validity of statutes can be regarded as having been met. As mentioned in Chapter 3, the criterion 'can meet with the assent of all people involved' changed into the less stringent 'could agree as participants in a rational discourse'. This raises the question, whether young people themselves, or concerned individuals with the authority to advise the legislator, have been able to speak from a viewpoint of empathy with young people on their behalf.

Only one of the three 'States' had ratified the *CRC* before adopting new child labour legislation, as explained in Chapter 7.<sup>74</sup> Two of the three Californian child labour laws enacted in the 1990s raised the level of fines and tightened restrictions, on account of non-compliance with existing regulations. However, the third law was occasioned by submissions from organisations working on behalf of a particular category of young workers, namely child actors. This was the only occasion, on which one of the 1990s' child labour bills has been submitted to the legislature from a point of view, that can be claimed to represent the young people themselves.

In the Netherlands, on the other hand, attempts have been made to discover the interests of young people, through surveys and interviews with young people and experts in youth issues, including representatives from the ethnic communities.<sup>75</sup> Rather than in response to the adoption of *Council Directive 94/33/EC*, which predates the Dutch *Working Times Act* by less than a year and a half, the new legislation was motivated by the objective to create law responsive to the priorities of the participants. The chapters on child and youth labour were drafted in accordance with the advice from the Council for Youth Policy, which recommended equal treatment of employees, whether below or above the age of eighteen.<sup>76</sup> Such a policy is in accordance with the principles of non-discrimination and promotion of the participation of young people in

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<sup>74</sup> Chapter 7, section 7.1.

<sup>75</sup> Chapter 7, section 7.2.2. *Preliminary surveys.*

<sup>76</sup> Chapter 7, section 7.2.2. *Recommendations from advisory bodies.*

society. The recognition of school attendance by sixteen and seventeen-year olds as 'working time'<sup>77</sup> is in line with such a policy, resulting in a maximum schooling/working week of forty-five hours.<sup>78</sup> However, school attendance is a form of work, which is not recognised as such in the form of pay. Despite the fact that this part-recognition of schooling as work represents a move towards the recognition of young people as social actors, it does not compensate for the policy to keep young people in a state of dependence until the age of twenty-one.<sup>79</sup>

In this case the preconditions were in accordance with the criteria for the development of valid law posited by Habermas. On the plus side, there was an organisation prepared to defend the standpoint that young people ought to be accepted as fully-fledged participants in society, functioning within a 'public sphere' moderately receptive to this proposition.<sup>80</sup> However, there was no opposition from any private parties with different viewpoints. All discussion was between the Council for Youth Policy and a Government, whose position was one of extreme caution rather than hostility in the face of a proposed relaxation of the existing child labour provisions, intended to promote growth towards independence. If the new child labour regulations are largely observed by young people, that is due both to the conviction that law should in general be obeyed and because of an approach, which treats the addressees as rational beings capable of understanding the need for restrictions. Despite the more protection-oriented approach, recommended by the Council for Youth Policy in connection with children under sixteen, two hours work after school results in days of between seven and eight hours spent in combined schooling and work. The permitted working time is therefore comparable to the eight-hour working day, which was the norm before the flexibilisation of working hours introduced in the

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<sup>77</sup> Chapter 7, section 7.6.2.

<sup>78</sup> See Table 7.3.

<sup>79</sup> Chapter 2, footnote 38.

<sup>80</sup> In accordance with the views of questionnaire respondents.



1990s.<sup>81</sup> Although several respondents worked longer than two hours on schooldays, claiming that two hours was too short,<sup>82</sup> the majority of young people under sixteen in the sample kept to the twelve hour maximum working period permitted per week. According to a number of surveys mentioned in Chapter 7, most young people find the restrictions acceptable.<sup>83</sup>

Permission to thirteen and fourteen-year olds to engage in light work has been justified in accordance with the perception that young people of that age should be able to have access to a modicum of light work in order to promote their independence.<sup>84</sup> According to a survey by the FNV many thirteen and fourteen year olds were pleased with the opportunity to engage in paid work.<sup>85</sup> As recounted in Chapter 7, the Dutch Trade Union Federations have shown their support of children interested in working to the extent of bringing a case against the Government in connection with the denial of a minimum youth wage from the youngest groups of workers.<sup>86</sup> A further example of an attempt to promote the interests of children, as they might interpret these themselves, concerned the 1999 amendment of the original 1995 *Working Times Act*, relaxing the absolute interdiction to fifteen year olds of using a cash register.<sup>87</sup> Clearly the Dutch child labour legislation goes furthest in accepting young people under eighteen as workers of equal value, thereby fulfilling the criterion of conditions to which all involved persons, including young people under eighteen, 'could agree as participants in a rational discourse'. However, it cannot be claimed, that Habermas's theory concerning the legality of statutes constitutes more than a theoretical account, described in his own words as an 'idealisation'. As a rule citizens are not consulted, when new legislation is being drafted, even though it affects their

<sup>81</sup> Chapter 7, section 7.2.2.

<sup>82</sup> Chapter 8, section 8.2.1.3.

<sup>83</sup> Chapter 7, footnote 93.

<sup>84</sup> Chapter 7, section 7.2.2., also Chapter 8, footnotes 238 and 239.

<sup>85</sup> FNV Jongerensecretariaat (1998). *Onderzoek naar vakantiewerk en bijbanen van dertien- en veertienjarigen*. Amsterdam, FNV.

<sup>86</sup> Case AF1787, *The Hague Civil Court*, 12 December 2002, reported in Section 7.3.1.4.

position. Whilst this is true for adult citizens, children and young people, being in an unequal power position, are even less likely to be able to participate in debates concerning decisions that involve them.

In general, the majority of young people in the two other jurisdictions appear to accept the proposition, that certain activities need to be restricted in order to minimise risk to inexperienced employees, and that working time has to be limited to allow for leisure periods. Yet child labour violations take place on a grand scale. The next section explains why this may be the case.

### 9.8. Reasons for young people to engage in prohibited work

Many young people engage in part-time work with little regard for any potential illegality, whether in connection with the type of employment, the hours, or lack of permits. The reason is that few young people are content to rely on pocket money. "To save money for the things my mother will not buy for me," as expressed by one girl in the sample as her motivation to start working.<sup>88</sup> Others work, for reasons of hardship or because certain forms of exploitative occupations are not interpreted as being 'work'.

In addition, some categories of young people are excluded from many of the channels used by their peers to find work, because of racial prejudice<sup>89</sup> or practical considerations such as the lack of transport.<sup>90</sup> Under such circumstances any job may be preferable to none.

#### Poverty

For some young people working is making the best of a difficult situation: if a young person's family is in financial difficulties and there is no alternative, children help as a matter of course. Young people may take in pride in helping their family

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<sup>87</sup> Chapter 7, section 7.4.1.2.

<sup>88</sup> Chapter 8, section 8.2.1.5.

<sup>89</sup> Maillard, J. (1995). 'Why hire one and not the other?' *World of Work* (12), pp. 28 - 30, see Chapter 6, section 6.5.

<sup>90</sup> O'Regan, K. M. and J. M. Quigley (1996). 'Teenage Employment and the Spatial Isolation of Minority and Poverty Households.' *Journal of Human Resources* vol. 31(3), p. 693, see Chapter 2, section 2.5.1.1.

financially. At the same time a young person may feel somewhat resentful, judging from the response: "paying parents' debts,"<sup>91</sup> as if reproaching them at one remove to allow such a situation to develop.

Family hardship forms a powerful reason for young people to try and alleviate their family's financial situation. Under those circumstances they are likely to be eager to contribute as much as possible, which can sometimes lead to very long hours.

As indicated in Chapter 6, family poverty has increased despite the prosperity of the 1990s.<sup>92</sup> Although the minimum wage is insufficient in all three jurisdictions to cover more than the most basic of expenses, the effect is most pronounced in California, where the argument for social redistribution has never been fully accepted.<sup>93</sup> In addition, the process of individualisation, mentioned by Snell *et al.*,<sup>94</sup> has been more extreme in the U.S.,<sup>95</sup> resulting in an ethos of self-sufficiency,<sup>96</sup> which regards economic incentives as more effective to lift people out of poverty than redistribution.<sup>97</sup> The view, that individuals ought to rely on their own resources rather than on assistance from the State, may help to explain the fact, that a smaller percentage of Californian than Dutch respondents thought, that the Government should take measures to encourage young people to remain in education.<sup>98</sup>

#### *The tyranny of the market*

Another factor motivating young people to work in violation of child labour legislation, is the competitive consumption regime promoted by aggressive television advertising. Certain standards of material possession are now regarded as normal by the majority of young people in affluent societies, as evident from a remark by a child

<sup>91</sup> Chapter 8, section 8.2.1.5.

<sup>92</sup> Section 6.4.1.

<sup>93</sup> Chapter 6, footnote 125.

<sup>94</sup> Snell, E., T. van der Hoek, *et al.* (2001). *Kinderen in armoede: opgroeien in de marge van Nederland*. Assen, Van Gorcum, p. 15.

<sup>95</sup> Schmidt, D. and R. E. Goodin (1998). *Social welfare and individual responsibility*. Cambridge, Cambridge University Press, pp. 135-136, see Chapter 6, footnote 126.

<sup>96</sup> Chapter 6, section 6.4.1.

<sup>97</sup> Patterson, J. T. (2000). *America's Struggle against Poverty in the Twentieth Century*. Cambridge, Mass., Harvard University Press, pp. 236-237; see Chapter 6, footnote 125.

respondent, whose reason for working consisted in the need for *"everyday things like clothes and CDs."* Possession of the same consumer goods as peers has come to be regarded as a badge of belonging, marking young people unable to afford such possessions as different, and somehow deficient.<sup>99</sup>

## **9.9. Assessing the various responses to child labour issues**

### **9.9.1. The regulation of acceptable child labour**

In essence 'the child labour problem', perceived as being different from the general need to build structures, that guarantee workers 'decent work', as expressed by the ILO,<sup>100</sup> is linked to the perception that children are essentially different beings from adults, either helpless or irrational or both.

Instead one might subscribe to the view, that children are individuals, who have less experience of exploitative practices and fewer resources to defend themselves from unreasonable demands. It makes no difference in this respect, whether such demands emanate directly from exploitative employers, indirectly from moral claims based on love and trust, or from the siren voice of the market setting standards for material possessions. Under conditions, which allow young people to function as social actors in their own right and with a voice of their own, child labour laws can be facilitative rather than restrictive. The 1995 Dutch legislation has adopted such an approach, based to a large extent on the guidance of the then Council for Youth Policy. In consequence the approach to the regulation of child work started from a vision of equality of citizens and is sustained by the support from the Trade Union Federations, and a vigorous policy of enforcement by the Dutch labour inspectorate. In contrast the three Californian child labour laws adopted during the 1990s were based on the need to prevent harm to young people, despite the awareness, that early work experience also helps young people to grow into independent adults. The Aruban child

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<sup>99</sup> Chapter 8, section 8.3.3.

<sup>100</sup> Chapter 6, sections 6.4.1.2, Also Chapter 8, section 8.2.2.

labour provisions, on the other hand, continue to construct the child as a not-yet-counting being, that has to be preserved to enjoy the sunny realms of childhood, in denial of the inroads made by modern life. Although the Dutch, and to some extent the Californian child labour legislation, take account of the fact that social change demands new solutions and recognise that children are gendered individuals, by the expression 'he or she', inequalities occasioned by gender or ethnicity differences remain outside its compass.

### 9.9.2. Approaches to the unacceptable face of child prostitution

Alongside the conceptions of children as social actors, who are in a position to benefit from the regulation of child work, one has to consider the image of the child involved in prostitution. Despite the fact, that sex work is being portrayed in certain circles as an occupation like any other,<sup>101</sup> prostitution has not discarded its stigma of delinquency.<sup>102</sup> As a result juvenile prostitutes are still being blamed for losing their innocence,<sup>103</sup> despite the recognition, that they are more sinned against than sinning. Such an attitude constructs children, saved from exploitative situations, at most as victims to be saved and kept under control, instead of individuals able to assist other young people owing to their experience. However, the perception of these young people as victims, emphasises their helplessness, as acknowledged in a proposal for a more neutral designation of abused children during the drafting stage of the Optional Protocol to the CRC *'On the Sale of Children, Child Prostitution and Child Pornography'*.<sup>104</sup>

All three jurisdictions have enacted legislation to prosecute pimps and procurers in the courts, but the Law has no solution for young people, who have stumbled into

<sup>100</sup> ILO Decent Work; Report of the Director-General, 87th Session, Geneva.  
[http://www.ilo.org/public/english/standards/reim/ilc/ilc87/rep-1.htm#Human rights\\_and\\_work](http://www.ilo.org/public/english/standards/reim/ilc/ilc87/rep-1.htm#Human%20rights_and_work).

<sup>101</sup> Bindman, J. (1997). *Redefining prostitution as sex work on the international agenda*. London, Anti-Slavery International.

<sup>102</sup> Chapter 5, footnote 178.

<sup>103</sup> Chapter 2, section 2.3.1.2.

<sup>104</sup> Chapter 5, section 5.4.7.

the habit rather than being coerced by specific, known individuals. The *Stockholm Agenda for Action*, which is fast acquiring the status of international quasi-law, holds out the promise of a much more integrated approach than national law has so far been able to offer. In addition to the recommendation to make the sexual exploitation of children and young people under eighteen an indictable offence, it has been suggested in the *Stockholm Agenda for Action*, that former child prostitutes should be involved as participants in a programme aiming at prevention, instead of remaining helpless victims.<sup>105</sup> Such an approach would allow this group of young people to look upon themselves as social actors, like their peers engaged in more 'respectable' child work, in a reaffirmation of the dignity and worth of the human person in accordance with the spirit of the *CRC*.

The only State in the comparison to adopt a National Plan of Action, the Netherlands, has taken a different approach to the commercial sexual exploitation of children from that to the regulation of child labour. Instead of establishing the Plan of Action as an ongoing concern, the various projects involved are regarded as completed, without any prospect of a repeat programme. As regards the two other 'States', no survey of child prostitution or other child sexual exploitation has been conducted in California, whilst neither child labour in industrial undertakings nor juvenile prostitution has so far been identified as a matter for concern on Aruba.<sup>106</sup>

#### 9.10. Influence of Law on attitudes and practices

As regards to the question, to what extent the large body of international and domestic law adopted in the course of the second half of the twentieth century has made a difference to practices and attitudes, one can only conclude, that preconceptions shape Law as much as Law shapes attitudes. The success of Law in

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<sup>105</sup> Chapter 5, footnote 143.

<sup>106</sup> Chapter 5, section 5.5.1.3.

effecting change depends on prevailing attitudes, which in their turn are determined by the language of preceding legal Instruments.

However, these Instruments do not speak with one voice, resulting in conflicting messages. The tension between the contradictory messages of Law notably manifests itself in the area of work by children and young people. On the one hand, children are to be protected from being exploited and victimised, effected by excluding children from the affairs of adults.<sup>107</sup> The message, that children are different from adults has been repeated time and again since the beginnings of the regulation of child labour. It has persisted in all International Instruments relating to children and young people from the *ICESCR* onwards, by the use of language, which constructs children as unequal from adults in a comfortable and unchallenged arrangement.

On the other hand, children are to be welcomed as co-citizens and equals, and allowed to participate in the world of adults. But this last empowering message coexists with the former in the most influential of all Conventions relating to children, the *CRC*. The fact, that the regulation of child work and related issues, are formulated as existing in a different dimension from work by adults, serves to perpetuate a measure of inequality, despite the Convention's simultaneous construction of the child as a subject of rights.

The empowering aspects of the *CRC* have largely met with approval in the Netherlands, because the will to effect change, exemplified by institutions and organisations such as the Council for Youth Policy and Defence for Children International, was already in existence. Both the insistence of the similarity of provisions for workers below and above eighteen and the equation of schooling and work of the *AtW* demonstrate a willingness to embrace the principles of equality embodied by Arts. 12 to 16 of the *CRC*, in an attempt to reconcile protection and empowerment. However, the later, more protective message of the *Optional Protocol*

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<sup>107</sup> Chapter 5, section 5.3.1. and 5.4.3.

on the *Sale of Children* has not led to further empowerment, but rather to increased control.

On Aruba, the ratification of the *CRC* has raised expectations of individuals working towards a better future for young people, despite the State's previous record of lack of compliance with International Instruments. Until recently, the law paid little attention to the welfare of children and young people, as evident from the lack of a coherent education policy and the outdated nature of ordinances, such as the *Arbeidsregeling* 1952. However, the fact, that Aruba has recently adopted a new Civil Code, which lowers the age of majority and grants young people over sixteen legal competence,<sup>108</sup> suggests, that attitudes towards young people are beginning to change, which may help to embed the *CRC* in society.<sup>109</sup>

In California, as in the rest of U.S., few people, even among those working with children, appear to put any trust in international standards.<sup>110</sup> As a result, the influence of International Instruments is virtually non-existent. In contrast with the lukewarm reception of the ratification of the *Optional Protocols* to the *CRC*, the *ILO Worst Forms of Child Labour Convention*, which unequivocally continues the tradition of protection, has been welcomed by organisations working for the welfare of children. One can only conclude, that attitudes towards children remain ambivalent, despite several Supreme Court decisions, which accept children as legal persons,<sup>111</sup>. The fact that labour legislation, which pretends to promote the independence of young people as well as protect them, has been enacted without voting the necessary funds for enforcement, additionally suggests, that issues concerned with children are not being taken seriously.

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<sup>108</sup> Chapter 2, footnote 56.

<sup>109</sup> Chapter 8, Section 8.5.6.

<sup>110</sup> Chapter 5, footnote 228.

<sup>111</sup> Chapter 4, footnote 4.



### 9.11. Suggestions

From the foregoing analysis one might conclude that there are no alternatives to a state of affairs, that either leaves many children and young people unprotected from exploitative practices or subjects them to unnecessary strictures. In addition, it has to be acknowledged that Law largely fails to take account of the aspirations and preferences of young people. Yet one can think of several solutions, some of which are not necessarily of a legal character that may help young people to regard themselves as equals, whilst safeguarding them from dangerous and/or exploitative working practices.

In addition to practices regarded as normal in the case of adult workers, such as inclusion into a country's employment statistics, access to support provided by trade unions and other work-related services, there are a number of measures which could be taken to make economic activities by children and young people acceptable as well as a pleasurable experience. Firstly, it is essential to prevent very young children from exploitation through being forced to work for others. Yet they ought to be able to give a helping hand for half an hour or so in their own homes and should be encouraged to do so. It seems reasonable to make working by children and young people into a practice radiating out from the child's own lifeworld: small children might be encouraged to perform small, but useful tasks in their own homes, as well as take part in theatrical performances, provided there is an element of play in this work, as recommended in the Dutch legislation. Such work would help to strengthen their sense of self-respect and responsibility.<sup>112</sup> Slightly older children of, say, ten to twelve, capable of performing more complicated tasks with a minimum of supervision such as the Swedish children cleaning the family home,<sup>113</sup> would benefit from undertaking slightly more independent work, possibly for a maximum of an hour and a half a day.

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<sup>112</sup> See Chapter 2, Section 2.3.1.1. *Defining the child- by age or by experience?* See also Chapter 8, footnote 190.

<sup>113</sup> See Chapter 2, 2.3.1.1. *Defining the child- by age or by experience?* Footnote 71.

Thirteen and fourteen-year olds, permitted to engage in paid work in accordance to the European Directive , might well start doing some non-industrial work for friends and acquaintances in their own neighbourhood as provided by the Dutch child labour Chapter of the Dutch *AtW*,<sup>114</sup> with the argument, that earning helps to promote their self-esteem. Young people, more advanced on the education-work ladder, should be able to combine both, which ideally should be linked, whether enrolled in a predominantly vocational course or a more academically oriented stream. Mentored remunerated tasks could form an integral part of the course. Work and education should be rated on an equal footing, both earning the student a stipend/fee to encourage her to pursue a type of education capable of exciting her interest.

With regard to groups of children and young people who at present are dependent on considerate treatment instead of a legally regulated work situation, activities such as sports and beauty contest can be brought within the law as advocated in the European *Directive 94/33/EC*. In addition, all workplaces ought to be rendered safe for everyone on the premises with places of known hazards prohibited by law to all untrained persons. Insurance covering people entering the premises should be obligatory in the same way as third person car insurance.

However, it is much more difficult to alleviate the predicament of undocumented asylum seekers and refugee children, many of whom undoubtedly understand their family's plight and who may do their utmost to help their parents. In addition, these children often suffer prejudice as well as hardship, particularly in the hardened climate of the twenty-first century, which depicts refugees as opportunists taking advantage of the inhabitants of the host country. In this case States which are Parties to the *CRC* overlook the fact, that they are already bound by *Art. 2(1)* to grant the same rights to all children. 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind,

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<sup>114</sup> Chapter 8, figure 8.11.

### *Conclusions*

irrespective of the child's or his or her parents, or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status . . . . .', which is further reinforced by Art. 3(1), providing, that 'In all actions concerning children [ . . . . . ] the best interests of the child shall be a primary consideration'. However, such solutions not only require the political will on the part of a country's Government, but also a more fundamental change in the way of thinking. If one asks, whether Law is able to change attitudes determined by stereotyped views of children and childhood which denies children a position of equal respect with adults, the response has to be, that certain preconditions need to be fulfilled first. Where a climate of willingness to promote human rights is already in existence, Law is able to change attitudes towards a conception of young people as participants and fellow citizens, regardless of differences, not only of colour and ethnicity, but also of age.

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### Glossary of terms and abbreviations (Dutch, Papiamentu etc.)

Abbrev.	Full name	Full name in English	Jurisdiction
AB	Afkondigings Blad	Bulletin of Acts	Aruba
AFDC		Aid to Families with Dependent Children	U.S.
	Allochtoon	Citizen with at least one parent born outside the Netherlands	Neth.
BHTK	Bijlagen Handelingen Tweede Kamer	Appendix to Lower Chamber Proceedings	
CBS	Centraal Bureau voor de Statistiek	Central Statistics Office	Neth.
CEACR		Committee of Experts on the Application of Conventions and Recommendations (ILO)	
	Economische Politie Rechter	Economic police magistrate	Neth.
GDP		Gross Domestic Product	
GNI		Gross National Income	
	Hoge Raad	Supreme Court	Neth.
	Hoofdijsnennota	Consultative document - concept Working Times Act	Neth.
	<i>Personae miserabiles</i>	Helpless and incompetent individuals	
	Raad voor het Jeugdbeleid	Council for Youth Policy	Neth.
	Transactie	Settlement fine	Neth.
BW	Burgerlijk Wetboek	Civil Codes of Aruba and Netherlands	Aruba / Neth.
CCR		California Code of Regulations	Cal.
CNV	Christelijk Nationaal Vakverbond	Federation of Christian National Trade Unions	Neth.
CSEC		Commercial Sexual Exploitation of Children	
EMU		Economic and Monetary Union	EU
EU		European Union	
FCC		Federal Communications Commission	U.S.
FNV	Federatie van Nederlandse Vakverenigingen	Federation of Dutch Trade Unions	Neth.
GAK	Gemeenschappelijk Administratie Kantoor	Joint Management Office	Neth.
GNI		Gross National Income	
ICFTU		International Confederation of Free Trade Unions	
IWC		Industrial Welfare Commission	Cal.
	Handelingen, I, II	Reports of 1 <sup>st</sup> and 2 <sup>nd</sup> Chamber parliamentary debates (comparable to Hansard)	Neth.
JIP	Jeugd Informatie Punt	Youth Information Point	Neth.
	Kamerstukken, I, II	'Command Papers, 1 <sup>st</sup> and second Chamber	Neth.
	Kinderrechtswinkels	Children's Rights Shops	Neth.
KB	Koninklijk Besluit	Royal Decree	Neth.
Labor Bureau		Bureau of Labor Statistics	Cal.
LC		Labor Code	Cal.
NGO	Non Governmental Organisation		
OJ		Official Journal of the European Communities	
PB	Publicatie Blad	Official Gazette	Aruba
PC		Penal Code	Cal.
SER	Sociaal Economische Raad	Social Economic Council	Neth.
Sr	Wetboek van Strafrecht	Criminal Code	Neth.
Stb	Staatsblad	Bulletin of Acts	Neth.
Stcr	Staatscourant	Official Gazette	Neth.
SZW	Ministerie van Sociale Zaken en	Ministry of Social Affairs and Employment	Neth.

TIPP  
WRO

Werkgelegenheid  
Arbeidsbesluit

Targeted Industries Partnership Program  
Work Regulation Ordinance

Cal.  
Aruba

# Ratifications of International Instruments relevant to child labour issues

Instrument	State/Country	Signed	Ratified	Reserv	Decl -
<b>Medical Examination of Young Persons (Sea) Convention, 1921, ILO C016</b>					
	U.S.				
	Netherlands/Aruba		09-03-1921		
<b>Minimum Age (Sea) Convention, Revised 1936, ILO C058</b>					
	U.S.		29-10-38		
	Netherlands/Aruba (superseded by C138)				
<b>Night Work of Young Persons (Industry) Convention, ILO C090</b>					
	U.S.				
	Netherlands/Aruba		22-10-54		
<b>Forced Labour Convention, 1930, ILO C029</b>					
	U.S.				
	Netherlands/Aruba - 1986		31-3-33		
<b>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, UN, 1950</b>					
	U.S., Netherlands, Aruba				
<b>League of Nations Slavery Convention 1927, amended by U.N. Protocol of 7 December 1953</b>					
	U.S.	18-12-53	07-03-58		
	U.S., Netherlands, Aruba	15-12-53	07-07-55		
<b>Abolition of Forced Labour Convention, 1957, ILO C105</b>					
	U.S.		25-08-91		
	Netherlands/Aruba - 1986		18-02-59		
<b>Supplementary Convention On The Abolition Of Slavery, The Slave Trade, And Institutions And Practices Similar To Slavery,<sup>1</sup> 1956</b>					
	U.S.		06-12-87		
	Netherlands/Aruba - 1986		03-12-57		
<b>Labour Inspection Convention, ILO C081 - 1947</b>					
	U.S.				
	Netherlands/Aruba		15-09-51 <sup>4</sup>		
<b>ICCPR, 1966</b>					
	U.S.	05-11-77	05-06-92		
	Netherlands / Aruba <sup>1</sup>	25-06-69	11-12-78		
<b>ICESCR, 1966</b>					
	U.S.	05-11-77			
	Netherlands	25-06-69	11-12-78		
	Aruba		01-01-86 <sup>4</sup>		
<b>Minimum Age Convention, 1973, ILO C138</b>					
	U.S.	05/07/00			
	Netherlands		14-09-76		
	Aruba		24-03-87 <sup>5</sup>	Art. 8	
<b>CEDAW</b>					
	U.S.	17-07-80			
	Netherlands / Aruba	17-07-80	23-07-91		

<sup>1</sup> Art. 1(d) 'Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour'.

<sup>2</sup> 30/12/1986 communication from the Netherlands Government to the Secretary-General, that Aruba would continue to be a State Party

<sup>3</sup> Article 12(1, 2, 4) 'The Kingdom of the Netherlands regards the Netherlands and the Netherlands Antilles as separate territories of a State for the purpose of this provision;

<sup>4</sup> See footnote 2

<b>CRC, 1989</b>					
	U.S.	16-02-95			
	Netherlands	26-01-90	06-02-95 <sup>5</sup>	Arts. 26, 27, 37, 40	Arts. 14, 22, 38
	Aruba		17-01-01	"	"
<b>Worst Forms of Labour Convention 1999, ILO C182</b>					
	U.S.		02-12-99		
	Netherlands		14-02-02		
	Aruba				
<b>CRC-OP-AC &amp; CRC-OP-SC, 2000</b>					
	U.S.	05-07-00	23-12-02	Art. 4, Art. 3(1)	
	Netherlands	07-09-00			
	Aruba				
<b>Homework Convention, 1996, ILO C177</b>					
	U.S.				
	Netherlands		31-1-02		
	Aruba				
<b>Optional Protocol to the Convention on the Elimination of Discrimination against Women</b>					
	U.S.				
	Netherlands		22-05-02	According to Art. 5(1)(b), accepts Part II, Arts. 1, 2, 3	
	Aruba		22-05-02	According to Art. 5(1)(b), accepts Part II, Art. 1	

**Ratifications of European Instruments relevant to child labour (not applicable to the U.S.)**

<b>Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Rome, 4.XI.1950</b>					
	Netherlands/Aruba <sup>7</sup>	31-08-54			
<b>Directive 94/33/EC, 1994</b>					
	Netherlands	22-08-94 <sup>8</sup>	20-08-94 <sup>9</sup>		
	Aruba	not applicable			
<b>European Social Charter, 1965, rev. 1996</b>					
	Netherlands / Aruba <sup>10</sup>		18/10/61		

<sup>5</sup> Declared applicable to Aruba, email from ILO, 17/04/2000

<sup>6</sup> Ratification Law passed in both Chambers 22-11-1994

<sup>7</sup> Amended by Protocol 1, Ets 009. Declaration contained in a letter from the Permanent Representative of the Netherlands, dated 29 November 1955, handed to the Secretary General at the time of deposit of the instrument of ratification, on 31 August 1954 - Or. Fr. In the opinion of the Netherlands Government, the State should not only respect the rights of parents in the matter of education but, if need be, ensure the possibility of exercising those rights by appropriate financial measures.

The Protocol shall apply to Surinam and the Netherlands Antilles (31/08/54), see footnote 10.

<sup>8</sup> Adopted

<sup>9</sup> Published OJ, L216

<sup>10</sup> Declaration by the Permanent Representative of the Netherlands, 24/12/1985, registered at the Secretariat General 3/01/1986: "as the Kingdom as such will remain the subject under international law with which treaties are concluded, the said changes will have no consequences in international law regarding treaties concluded by the Kingdom which already apply to the Netherlands Antilles, including Aruba." Acceptance of provisions of the revised European Social Charter (1996, of the European Social Charter (1961), as well as the 1988 Additional Protocol, in respect of Aruba: Articles 1, 5, 6, 16 and Article 1 of the Additional Protocol.

## Appendix 1, Questionnaire presented to 12-18 year olds

1. Where do you live? - Place of residence?
2. Are you a boy or a girl? boy ☐ girl ☐
3. How old are you?
4. Have you now got a job? Yes ☐ No ☐
5. Did you work before? Yes ☐ No ☐
6. What type of work is it / was it? Please tick all boxes that are applicable

A. Delivering newspapers or leaflets	<input type="checkbox"/>
B. Milk delivery	<input type="checkbox"/>
C. Work in the fields picking fruit and vegetables	<input type="checkbox"/>
D. Stacking shelves in a supermarket	<input type="checkbox"/>
E. Other store work / selling	<input type="checkbox"/>
F. Cleaning	<input type="checkbox"/>
G. Office work	<input type="checkbox"/>
H. Baby sitting	<input type="checkbox"/>
I. Serving in restaurants	<input type="checkbox"/>
J. Other restaurant work	<input type="checkbox"/>
K. Farm work	<input type="checkbox"/>
L. Work in a garage	<input type="checkbox"/>
M. Door to door selling	<input type="checkbox"/>
N. Helping neighbours	<input type="checkbox"/>

Or else? please give particulars of the type of work

7. How many hours do / did you work per day after school?  
less than 1 hour ☐ 1 hour ☐ 2 hours ☐ 3 hours ☐ more than 3 ☐
8. If you work(ed) during the holidays, how much time is it / was it per day?  
less than 3 hours ☐ 3 - 5 hours ☐ 6 - 8 hours ☐ over 8 ☐
9. How many people under 16 do you know who have a job?  
none ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more ☐
10. How many people between 16 and 18 do you know who have a job?  
none ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more ☐
11. Does your best friend have a job? yes ☐ no ☐
12. Do you know how long you may legally work after school? yes ☐ no ☐
13. How much time do you think young people should be allowed to work after school?  
less than 1 hour ☐ 1 hour ☐ 2 hours ☐ 3 hours ☐ more than 3 ☐
14. Why did you start working? Please tick all boxes that are applicable:
 

a) I can't manage on my allowance	<input type="checkbox"/>
b) I want to save for my holidays	<input type="checkbox"/>
c) Everybody does it	<input type="checkbox"/>
d) I like working	<input type="checkbox"/>
e) My parents think it is a good idea	<input type="checkbox"/>
f) I have to pay for my school books, writing books, uniform etc.	<input type="checkbox"/>
g) I want to save for something major (a motorcycle, car, music centre, etc.)	<input type="checkbox"/>
h) I learn lots of new things	<input type="checkbox"/>
i) Otherwise I am bored	<input type="checkbox"/>
j) I want to help my parents	<input type="checkbox"/>
k) Other reasons? - Please specify	<input type="checkbox"/>

(Use reverse of the questionnaires, if required)



## Appendix 2 - QUESTIONNAIRE

### I. Respondent details

No need to enter name as data will be used anonymously

1

Place of residence

Male / female

M ☐ F ☐

Age group:

- |    |            |                          |
|----|------------|--------------------------|
| a. | [under 20] | <input type="checkbox"/> |
| b. | [20 – 29]  | <input type="checkbox"/> |
| c. | [30 – 39]  | <input type="checkbox"/> |
| d. | [40 – 49]  | <input type="checkbox"/> |
| e. | [50 – 59]  | <input type="checkbox"/> |
| f. | [Over 60]  | <input type="checkbox"/> |

Involvement in children's / adolescent development

2

- |    |                                |                          |
|----|--------------------------------|--------------------------|
| a. | Teacher                        | <input type="checkbox"/> |
| b. | Social worker                  | <input type="checkbox"/> |
| c. | Therapist                      | <input type="checkbox"/> |
| d. | Youth worker                   | <input type="checkbox"/> |
| e. | Concerned member of the public | <input type="checkbox"/> |

Ethnic background:

3

- |    |                             |                          |
|----|-----------------------------|--------------------------|
| a. | Afro-American               | <input type="checkbox"/> |
| b. | Chinese                     | <input type="checkbox"/> |
| c. | Hispanic                    | <input type="checkbox"/> |
| d. | Mixed race                  | <input type="checkbox"/> |
| e. | Native American             | <input type="checkbox"/> |
| f. | South-Asian                 | <input type="checkbox"/> |
| g. | South-East Asian            | <input type="checkbox"/> |
| h. | White                       | <input type="checkbox"/> |
| i. | Other, please specify below | <input type="checkbox"/> |

4

- |    |                                                                             |                                                       |
|----|-----------------------------------------------------------------------------|-------------------------------------------------------|
| a. | Do you yourself have any children between the ages of 10 and 18             | Y <input type="checkbox"/> N <input type="checkbox"/> |
| b. | Are you working with children or young people from ethnic minorities? (Y/N) | Y <input type="checkbox"/> N <input type="checkbox"/> |
| c. | Are you working with children with disabilities? (Y/N)                      | Y <input type="checkbox"/> N <input type="checkbox"/> |

## II. Your thoughts about the needs of children & work

### A) Hours of work per day after school

5

- a. Do you think that 2 hours per day part-time work on a school day, is:  
i) not enough ☐ ii) too long ☐ iii) about right ☐
- b. Do you think that 12 hours part-time work per week while school is in session, is:  
i) not enough ☐ ii) too much ☐ iii) about right ☐
- c. Do you know how long young people in California are allowed to work after school?  
Is it 1 hour ☐ 2 hours ☐ 3 hours ☐ Don't know ☐
- d. Do you know how long young people are allowed to work after school by the provisions of the Fair Labor Standards Act?  
Is it 1 hour ☐ 2 hours ☐ 3 hours ☐ Don't know ☐

### A) Hours of work per day on a non-school day

6

- a. Do you think that 7 hours on a non-school day and 35 hours per week is:  
i) not enough ☐ ii) too long ☐ iii) about right ☐
- b. Do you know how many hours 15-year olds in California are allowed to work per day on a non-school day?  
Is it 6 hours ☐ 7 hours ☐ 8 hours ☐ Don't know ☐
- c. Do you know how many hours 15-year olds are allowed to work per day by the Fair Labor Standards Act on a non-school day?  
Is it 6 hours ☐ 7 hours ☐ 8 hours ☐ Don't know ☐

### C) Number of weeks work is permitted during school vacations

7

- a. Do you think that 15-year olds should be allowed to work for i) the entire holiday period, ii) for half the period, iii) a third of the holiday period?  
i) entire period ☐ ii) half ☐ iii) a third ☐

### D) Rest periods during the working day

8

- a. i) Do you think that provision of regular rest hours is an unnecessary measure that encourages young people to be idle and waste their time, ii) that this helps to prevent children from becoming over-tired and helps them to remain alert, or iii) that rest periods during the working day are not important?  
i) Unnecessary ☐ good idea ☐ not important ☐
- b. Do you know what the provisions are for day-time rest periods for under 18s in California? How many times a day?  
 $\frac{1}{2}$  hour every 8 hours ☐ every 4 $\frac{1}{2}$  hours ☐ none ☐ Don't know ☐
- c. Do you know what the provisions are for day-time rest periods for under 18s in the Fair Labor Standards Act? How many times a day?  
 $\frac{1}{2}$  hour every 8 hours ☐ every 4 $\frac{1}{2}$  hours ☐ none ☐ Don't know ☐

### Children needing to work for economic reasons

Some children / young persons feel obliged to contribute to their family's income by working.

9

- a. Do you think that i) this is a matter for the young person's family to decide, ii) that the State as well as the family ought to be involved, or iii) that the young person should decide?

Family only ☐ both State and family ☐ the young person only ☐

- b. If you think the State ought to be involved, do you think it should take steps to prevent children under 16 from needing to work part-time? (Y/N)

Y ☐ N ☐

- c. If you think the State ought to be involved, do you think it should take steps to prevent 16 – 18-year olds from leaving school because they feel obliged to work full-time? (Y/N)

Y ☐ N ☐

If you think this is important, please give your ideas of how this could be done:

9c-txt

Further details would be helpful, but are not required

### Your thoughts about the importance of education, work and leisure activities for teenage development

Do you think that it is important that teenagers spend time after school in particular activities? Please tick one box in section a.

10A

- |    |                                                 |                          |
|----|-------------------------------------------------|--------------------------|
| a. | in school-related activities, such as homework? | <input type="checkbox"/> |
| b. | in leisure activities?                          | <input type="checkbox"/> |
| c. | working?                                        | <input type="checkbox"/> |
| d. | a combination?                                  | <input type="checkbox"/> |
| e. | school related + leisure                        | <input type="checkbox"/> |
| f. | school related + work                           | <input type="checkbox"/> |
|    | school related + work + leisure                 | <input type="checkbox"/> |

10B

How much time should 15 – 18-year olds have to spend after school in school-related activities such as homework?

- |    |                                         |                          |
|----|-----------------------------------------|--------------------------|
| a. | no time at all                          | <input type="checkbox"/> |
| b. | 1 hour                                  | <input type="checkbox"/> |
| c. | 2 hours                                 | <input type="checkbox"/> |
| d. | other? – please specify number of hours | <input type="checkbox"/> |

10C

- b. How much time should 15 – 18-year olds be able to spend after school in leisure activities?

- a. no time at all ☐
- b. 1 hour ☐
- c. 2 hours ☐
- d. 3 hours ☐
- e. other? – please specify number of hours ☐

### Possible benefits of part-time work

**11A** Do you think children below the age of 16 benefit from holding a part-time job? (Y/N) Y ☐ N ☐

**11B** If you think holding a part-time job benefits young people, how do you think this would benefit their development? For instance – please tick all you think are applicable:

- a. Promotes their self-esteem? ☐
- b. Helps them to understand the value of money? ☐
- c. Helps them to become more motivated? ☐
- d. Helps them to become better behaved? ☐
- e. Helps them to become more responsible? ☐
- f. Other, please specify below: ☐

Further details would be helpful, but are not required

**12**

Some types of work may be more beneficial than others. Below a list of some of the most common work activities – whether paid or unpaid – of under 16s. Please give a ranking of the detrimental / beneficial character of the work by ticking one of the boxes for each subject.

	Wholly Detrimental	Detrimental	Detrimental or Beneficial	Beneficial	Wholly Beneficial
<b>A</b>					
<b>B</b>					
<b>C</b>					
<b>D</b>					
<b>E</b>					
<b>F</b>					
<b>G</b>					
<b>H</b>					
<b>I</b>					
<b>J</b>					
<b>K</b>					
<b>L</b>					
<b>M</b>					
<b>N</b>					

Other, please elaborate:

12-txt

Further details would be helpful, but are not required

### Work suited to 'the life world' of children

13

- a. Do you think that permitting younger children (below 14) to engage in work activities in their own living environment, provided this is restricted to **non-school days only**, is:  
i) beneficial, ii) undesirable, or iii) makes no difference to their developmental needs?  
i) beneficial ☐ ii) undesirable ☐ iii) make no difference ☐
- b. Do you think that permitting younger children (below 14) to engage in work activities in their own living environment, whether this takes place on **school or non-school days**, is: i) beneficial, ii) undesirable, or iii) makes no difference to their developmental needs?  
i) beneficial ☐ ii) undesirable ☐ iii) make no difference ☐

### I. Types of work allowed young people between 16 and 18

14

- a) Should labour provisions be different for 16 – 18-year olds from those for adults? (Y/N)  
Y ☐ N ☐
- b) Do you think that 16 – 18-year olds still need some form of formal schooling? (Y/N)  
Y ☐ N ☐

If you think that 16 – 18-year olds require some sort of formal instruction after leaving school, please state why:

14c-bd

Further details would be helpful, but are not required

Generally certain kinds of work are restricted for 16 to 18-year olds, for instance spending a substantial part of their working day at the wheel, or doing repetitive tasks, where young people cannot control their working pace such as assembly line work without supervision.

15

- a. Do you think that 16 – 18-year olds should be allowed to drive? Y ☐ N ☐
- b. If they are allowed to drive at that age, should they be employed to drive for a significant part of their working day? (Y/N)  
Y ☐ N ☐
- c. Do you think that it is right to forbid 16 – 18-year olds to work on assembly lines without supervision?  
Y ☐ N ☐
- d. It is suggested that 16 – 18-year olds should not work between 22.00 – 6 hours, or 23.00 – 7.00 hours. Do you think that this is right?  
Y ☐ N ☐
- e. Do you know what the provisions are for rest periods at night for 16 – 18 year olds in California? Y ☐ N ☐
- f. If the answer is Y, what is the night rest period when young people may not work?  
between 10 p.m and 6 a.m. ☐ between 11 p.m. and 7 a.m. ☐ other ☐ none ☐

g. Do you know what the provisions are for rest periods at night for 16 – 18 year olds in the Fair Labor Standards Act? Y ☐ N ☐

h. If the answer is Y, what is the night rest period when young people may not work?  
between 10 p.m and 6 a.m. ☐ between 11 p.m. and 7 a.m ☐ other ☐ none ☐

### Work in the entertainment industry

Some children / youth work for the entertainment industry (fashion modeling, film industry, commercials, appearance on television or shows) , –

16

a. Do you think that activities that bring children to the attention of the public are i) wholly damaging for them or ii) have aspects that are more damaging than beneficial, iii) are neither damaging nor beneficial, iv) more beneficial than damaging or , iv) wholly beneficial?

16A

Wholly Damaging	More Damaging than Beneficial	Neither Damaging nor Beneficial	More Beneficial than Damaging	Wholly Beneficial
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16B

If you think, that activities that bring children to the attention of the public have beneficial aspects, does this benefit them for the following reasons? – please tick all that apply

- a. it helps them to gain in self-confidence ☐
- b. they learn to mix with people from different backgrounds ☐
- c. they learn how to express themselves better ☐
- d. it is an incentive for children to do their best to perfect the performance ☐

Other? - please elaborate below:

e-txt

Further details would be helpful, but are not required

16C

If you think that activities that bring children to the attention of the public, have aspects that are damaging to children / adolescents, do you think that it is for any of the following reasons? - Please tick all that apply:

- a. taking part in a show / performance sets them apart from their peers ☐
- b. they tend to be treated different from other children / adolescents ☐
- c. they have too much money to spend ☐
- d. they run the risk of becoming spoilt ☐
- e. they might see and learn things which require an understanding beyond their years ☐
- f. other? – please elaborate below:

Further details would be helpful, but are not required

K. R

Do you think that:

17

- a. i) it is sufficient to regulate youth participation in the entertainment industry in the same way as other youth employment, by limiting the hours a child can work, and protecting them from working in a hazardous environment?, or ii) Do you think that the theme of the work of entertainment in which a child participates could be harmful and that the law should take account of this fact?
- b. i) same provisions sufficient ☐ ii) need for special regulations ☐
- c. Do you think that there is i) need for special measures to help children cope with long waiting hours, repetitions of rehearsals, and emotional pressures? ii) no need?
- i) need ☐ ii) no need ☐

If you have any views on the subject of child / adolescent employment which have so far not been addressed, please elaborate:

17b-txt

Further details would be helpful, but are not required

#### L) The Convention on the Rights of the Child

The Convention on the Rights of the Child which has been signed by the U.S., but so far not ratified, contains 5 articles which are of importance for the subject of the employment of to children. These are either protective:

- i) the right freedom from exploitation,
- ii) the right to freedom from sexual exploitation

or provide entitlements:

- iii) the right to education,
- iv) the right to leisure,
- v) the right to express his views freely in all matters affecting the child,

and above all, that:

- vi) the best interests of the child should be a primary consideration.

18

- a) i) Do you think ratification of the Convention is desirable, ii) undesirable iii) or do you think that ratification of the Convention will not make any difference

i) desirable ☐ ii) undesirable ☐ iii) no difference ☐

If you have strong feelings on the subject, please elaborate below:

Further details would be helpful, but are not required

### **Appendix 3, Interview questions**

1. What do you understand by the term 'child labour'?
2. Is this something that also occurs in countries such as yours?
3. Children working to help their family avoid hardship, is that something that only happens in developing countries, or also in this part of the world?
4. What are your views on the employment of 16 and 17 year olds - should they be able to leave school before the age of 18, for instance, if they feel they need to help their families?
5. In some countries young people 16-18 need to follow some kind of part-time education for part of the week, while work during the rest of the week. What are your views on such an arrangement ?
6. What are your ideas about children helping at home from an early age?
  - i) Is it different for girls? ii) Is it different for ethnic minority children?
7. What is your view about the employment of children for the film industry, as fashion models, in advertising?
9. Do you think sports is beneficial for children and young people?
10. Some people consider prostitution work like any other. Most think prostitution of children under sixteen is exploitation, but what about sixteen and seventeen year olds, should they be able to do with their bodies what they want?
11. Are you acquainted with the Convention on the Rights of the Child? If so, do you think ratification would be beneficial or detrimental for children and why?



#### **Appedix 4 - Korczak's The Rights of the Child**

I call for a Magna Charta Libertatis concerning the rights of the child. Perhaps there are more, but I have found these to be the principal rights.

- The child has the right to receive love.
- The child has the right to respect
- The child has the right to op conditions in which to grow and develop
- The child has the right to live in present
- The child has the right to be himself or herself.
- The child has the right to make mistakes.
- The child has the right to fail.
- The child has the right to be taken seriously.
- The child has the right to be appreciated for what he is.
- The child has the right to have secrets.
- The child has the right to a lie, a deception, a theft.
- The child has the right to respect for his possessions and budget.
- The child has the right to education.
- The child has the right to protest an injustice.
- The child has the right to a Children's Court where he can judge and be judged by his peers.
- The child has the right to be defended in the juvenile justice court system.
- The child has the right for respect for his grief.
- The child has the right to commune with God.
- The child has the right to die prematurely.

**Appendix 5 - European Social Charter, Art. 7 ' The right of children and young persons to protection'**

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

## Appendix 6 - The Island of Aruba, location and nature of relationship with the Netherlands



### The Kingdom of the Netherlands<sup>1</sup>

Aruba, which until 1986 formed part of the Netherlands Antilles, is an autonomous partner within the Kingdom of the Netherlands, which consists of three members, the Netherlands (sometimes called 'the Netherlands in Europe'), the Antilles and Aruba. The association between the European Netherlands and the Caribbean islands goes back to 1634, when the Dutch West India Company took possession of the Island of Curaçao and its dependencies, the Leeward Islands. When Great Britain handed the islands back to the Netherlands after the Napoleonic wars, three colonies were established in the Caribbean, Surinam, the Leeward Islands and the Windward Islands. The colonies became autonomous democracies by the Charter of the Kingdom of the Netherlands (*Koninkrijk Statuut*, hereafter *Charter*) in 1954, united in a quasi-federal structure.

<sup>1</sup> Based on United Nations, HRI, Core Document Forming Part of the Reports of State Parties, Netherlands: Aruba, 1995, <http://www.hri.ca/fortherecord1997/documentation/coredocs/hri-core-1-add68.htm>; de Jong, H. G. (1989). 'Aruba: a Separate 'Country' within the Kingdom of the Netherlands on its Way to Independence.' *Nederlands International Law Review*, pp. 71-89; Alkema, E. A. (1999). 'Constitutional Law'. Introduction to Dutch Law. J. M. J. Chorus, P. H. M. Gerver, E. H. Hondius and A. K. Koekkoek. The Hague, Kluwer Law International. pp. 291-330; 295-296, 312; Hoeft, R. (1996). 'Thrust together: the Netherlands relationship with its Caribbean partners.' *Journal of Interamerican Studies and World Affairs* vol. 38(4), pp. 35-53. <http://www.ndu.edu/library/pubs/CJA97.html>, pp. 35-53; The status of OCTs associated with the EC and options for "OCT 2000", Communication from Mr Pinheiro to the Commission (23 April 1999).

The Queen of the Netherlands is also head of state of the Kingdom, represented in each of the two States by a governor (*Charter*, Arts. 1-2). The Netherlands Supreme Court acts as a Court of Appeal for the Caribbean States. According to Art. 5, §2, the Charter prevails over the Constitutions of the Partners. External affairs, such as defence and foreign relations, national sovereignty, citizenship, so-called 'Matters of the Kingdom' (Art. 14) are handled by the Council of Ministers for the Kingdom, which consists of the Dutch Cabinet and ministers plenipotentiary for the Netherlands Antilles and Aruba. Internal affairs are managed by the respective members of the partnership, in meetings of the Island Parliaments (*de Staten*).

Even before the adoption of the Charter, Aruba had expressed a wish to loosen the ties with the other Caribbean islands, whilst retaining a special relationship with the Netherlands. It was felt, that the Antillian Government, hosted by the larger Island of Curaçao, did not represent the interests of Aruba. Also, the pressure of the responsibility for the poorer members of the Antillian partnership began to be felt as a burden by the more affluent Island of Aruba. Once Surinam had left the Kingdom upon independence in 1975, a delegation from the Aruban Island Council met with the Government of the Kingdom to discuss the possibility of total independence. As a result Aruba was granted separate status (*status aparte*) within the Kingdom until 1996, when the State would leave the Kingdom upon becoming independent. In anticipation of independence a separate Constitution for Aruba, on the model of the Dutch Constitution, was adopted in 1986. The Islands of Curaçao and St Maarten also began to insist on independence. However, Dutch policies towards the Caribbean partners underwent a change during the late 1980s and 1990s, amongst other things, in connection with allegations of financial irregularities, money laundering and drug smuggling. This led to emphasis upon greater financial stability and 'good governance' on the part of the Antillian and Aruban Governments. Referenda held in the different Antilles Islands resulted in retention of the *status quo*. Aruba too opted to stay within the Kingdom, according to Hoeffe because of the greater stability offered to foreign

investment as well as the fact, that Dutch citizenship offers many advantages, such as free access to the European Union.<sup>2</sup> In addition the Dutch Government also has financial obligations towards the Caribbean parts of the Kingdom. It has now been provided that Aruba itself can decide by State Ordinance, whether to remain within the Kingdom (*Charter*, Arts. 58-60). Despite the fact, that international agreements, such as the ratification of Conventions, are concluded on behalf of the Partner governments, although in close collaboration with them, each Partner is autonomous with respect to fulfilling its constitutional obligations, such as the submission of periodic reports.

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<sup>2</sup> Treaty establishing the European Community (Consolidated version) Part Four: Association of the overseas countries and territories, Arts. 182, 184.



1905 Regout doll dinner set

In 1887 twelve year-old boys were employed  
by Regout, Maastricht to carry wares to the  
kilns for up to twelve hours at night